

CHAPTER 493. REGULATORY LOANS

REGULATORY LOAN ACT Act 21 of 1939

AN ACT to define and regulate the business of making regulatory loans; to permit the licensing of persons engaged in that business; to provide for the administration of this act and for the promulgation of rules; and to prescribe penalties.

History: 1939, Act 21, Eff. Sept. 29, 1939;—Am. 1947, Act 130, Eff. Oct. 11, 1947;—Am. 1963, Act 103, Eff. Sept. 6, 1963;—Am. 1971, Act 168, Eff. Mar. 30, 1972;—Am. 1978, Act 528, Eff. Mar. 30, 1979;—Am. 1980, Act 392, Eff. Mar. 31, 1981;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

The People of the State of Michigan enact:

493.1 Short title; definitions.

Sec. 1. (1) This act shall be known and may be cited as the “regulatory loan act”.

(2) As used in this act:

(a) “Advertising” means publishing or broadcasting, or causing to be published or broadcast, material that has been prepared for public distribution by means of newspapers, magazines, or electronic media. Advertising does not include a stockholder communication, such as an annual report, interim financial report, registration statement, security, prospectus, application for listing a security on a stock exchange, or proxy materials. Advertising does not include a communication addressed to a person who has previously executed a loan agreement relative to that person's account.

(b) “Assets” means liquid assets, collectible loans made in accordance with this act, and personal property acquired in the general conduct of business transacted under this act.

(c) “Commissioner” means the commissioner of the office of financial and insurance services in the department of consumer and industry services.

(d) “Control person” means a director or executive officer of a licensee or a person who has the authority to participate in the direction, directly or indirectly through 1 or more other persons, of the management or policies of a licensee.

(e) “Executive officer” means an officer, member, or partner of a licensee, including chief executive officer, president, vice president, chief financial officer, controller, compliance officer, or any other similar position.

(f) “Financial licensing act” means any act listed in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(g) “License” means a single license issued to a single place of business.

(h) “Licensee” means a person licensed or required to be licensed under this act.

(i) “Liquid assets” means cash, unrestricted deposits in banks, and readily marketable securities at their then market value.

(j) “Loan” or “regulatory loan” means a loan made by a licensee to an individual for personal, family, or household use.

(k) “Person” means an individual, partnership, association, corporation, limited liability company, or other legal entity.

History: 1939, Act 21, Eff. Sept. 29, 1939;—Am. 1947, Act 130, Eff. Oct. 11, 1947;—CL 1948, 493.1;—Am. 1963, Act 103, Eff. Sept. 6, 1963;—Am. 1971, Act 168, Eff. Mar. 30, 1972;—Am. 1978, Act 528, Eff. Mar. 30, 1979;—Am. 1988, Act 162, Eff. Sept. 1, 1988;—Am. 1991, Act 14, Eff. Oct. 1, 1991;—Am. 1995, Act 165, Eff. Mar. 28, 1996;—Am. 1996, Act 184, Imd. Eff. May 3, 1996;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002;—Am. 2002, Act 393, Imd. Eff. May 30, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.1a Repealed. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: The repealed section pertained to short title.

493.2 Business of making loans; license required; application for license; oath; form and contents; fees; proof of net worth.

Sec. 2. (1) Except as otherwise provided under this act, a person shall not engage in the business of making loans of money, credit, goods, or things in action and charge, contract for, or receive on the loan a greater rate

of interest, discount, or consideration than the lender would be permitted by law to charge if the lender were not a licensee under this act and without first obtaining a license from the commissioner, or by obtaining a license under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(2) Application for a license shall be in writing, under oath, and in the form prescribed by the commissioner, and contain the name and the address, both of the residence and place of business, of the applicant, if the applicant is a copartnership or association, of every member, and if a corporation, of each officer and director. The application shall also include the address where the business is to be conducted and all other relevant information as the commissioner may require. The applicant at the time of making the application shall pay to the commissioner an investigation and annual operating fee as provided by this act.

(3) An applicant shall prove, in form satisfactory to the commissioner, that the applicant has available net worth of at least \$100,000.00 for the operation of the business at the location specified in the application.

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.2;—Am. 1971, Act 168, Eff. Mar. 30, 1972;—Am. 1991, Act 14, Eff. Oct. 1, 1991;—Am. 1992, Act 71, Imd. Eff. June 2, 1992;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.3 Licenses; bond of applicant; approval; conditions.

Sec. 3. The applicant, at the time of filing an application, shall also file when requested by the commissioner a bond in an amount to be approved by the commissioner, in which the applicant shall be the obligor. The surety company issuing the bond shall be qualified, able, and willing to write bonds required by this act. The bond shall run to the people of the state of Michigan and may be sued on by the state or any person who may have a cause of action against the obligor. The bond shall be conditioned that the obligor will comply with this act and all rules and regulations made under this act, and will pay to the state and to any person all money due or owing to the state or to the person from the obligor.

History: 1939, Act 21, Eff. Sept. 29, 1939;—Am. 1947, Act 130, Eff. Oct. 11, 1947;—CL 1948, 493.3;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.4 Investigation; findings; issuance or denial of license; notice; transcript of decision and findings.

Sec. 4. (1) Upon the filing of the application, the payment of the fees, and the approval of the bond, the commissioner shall investigate the applicant and if he or she finds that the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this act and that the applicant has a net worth in the amounts required under section 2, the commissioner shall issue a license to the applicant to conduct business at the location or locations specified in the application. The license shall remain in effect until it is surrendered by the licensee or revoked or suspended as provided under this act.

(2) If the commissioner finds that the applicant fails to meet the requirements of this act, he or she shall not issue a license and shall notify the applicant of the denial and return to the applicant the bond and fee paid by the applicant, retaining the investigation fee to cover the costs of investigating the application.

(3) The commissioner shall approve or deny every application for license within 60 days from the date that the application was filed with the fees and the approved bond.

(4) If the application is denied, the commissioner shall within 20 days from the date of denial file with the office of financial and insurance services a written transcript of the decision and findings containing the evidence and the reasons supporting the denial and shall serve upon the applicant a copy of the filing.

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.4;—Am. 1971, Act 168, Eff. Mar. 30, 1972;—Am. 1991, Act 14, Eff. Oct. 1, 1991;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

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493.5 Licenses; contents; posting; transfer; assignment.

Sec. 5. (1) Except as otherwise provided under this section, the license shall state the address at which the principal office of the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a co-partnership or association, the names of the members, and if a corporation, the date and place

of its incorporation.

(2) The license shall be kept conspicuously posted in the places of business specified in the license.

(3) The license is not transferable or assignable without the prior approval of the commissioner.

(4) The sale, transfer, assignment, or conveyance of more than 25% of the outstanding voting stock of a licensee that is a corporation, or more than 25% of the interest in a licensee that is a partnership or other unincorporated legal entity, shall be considered to be a transfer of the license.

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.5;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.6 Net worth; additional bond; filing.

Sec. 6. (1) Every licensee shall maintain at all times net worth in the amount required under section 2.

(2) If the commissioner determines at any time that any bond is insecure, exhausted, or otherwise of doubtful validity or collectability, the commissioner may require the licensee to obtain an additional bond in an amount of not more than \$1,000.00. The licensee shall file the new bond within 10 days after the commissioner has issued written demand upon the licensee.

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.6;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.7 Changing name or place of business; procedure; activities at more than 1 place of business; ceasing to engage in activities subject to act.

Sec. 7. (1) A licensee under this act may change its name or place of business shown on the license by giving prior written notice to the commissioner and returning the license to the commissioner. The commissioner shall amend the license certificate to show the new name or the new place of business and the date of the new certificate.

(2) A licensee may engage in activities for which a license is required at more than 1 place of business by providing not less than 30 days' written notice to the commissioner before opening each additional place of business. This subsection does not apply to any place of business listed in the licensee's approved application for licensure.

(3) A licensee that ceases engaging in business activities that are subject to this act at a place of business shall provide written notice to the commissioner within 30 days.

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.7;—Am. 1971, Act 168, Eff. Mar. 30, 1972;—Am. 1991, Act 14, Eff. Oct. 1, 1991;—Am. 1992, Act 71, Imd. Eff. June 2, 1992;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.8 Annual establishment of fees schedule; bond; action for recovery of fees or penalties; fees nonrefundable; report; disposition and use of money received.

Sec. 8. (1) The commissioner shall annually establish the schedule of fees sufficient to pay the costs of administering this act. The fees are as follows:

(a) For the investigation of an applicant for a license, not less than \$250.00 or more than \$1,000.00, which is not refundable.

(b) For the issuance or annual renewal of a license, an annual operating fee based upon the volume and types of activities conducted by the licensee during the previous calendar year. The annual operating fee set by the commissioner under this subsection shall be based upon information in reports filed under section 11.

(c) For amending a license, not less than \$50.00 or more than \$100.00.

(2) At the time of paying the annual operating fee, each licensee shall file with the commissioner a bond as required by section 3.

(3) If any fees or penalties provided for in this act are not paid when required, the commissioner may maintain an action against the delinquent licensee for the recovery of the fees or penalties together with interest and costs.

(4) Except as otherwise provided by this act, the fees received under this act are not refundable.

(5) A licensee who fails to submit to the commissioner a report required under section 11 is subject to a penalty of \$50.00 for each day the report is delinquent or \$5,000.00, whichever is less.

(6) Money received under this act shall be paid into the state treasury to the credit of the office of financial

and insurance services and shall be used for the operation of the office of financial and insurance services.

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.8;—Am. 1971, Act 168, Eff. Mar. 30, 1972;—Am. 1991, Act 14, Eff. Oct. 1, 1991;—Am. 1992, Act 71, Imd. Eff. June 2, 1992;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.9 Revocation, suspension, or surrender of license; reinstatement or issuance of new license; transcript of order.

Sec. 9. (1) The commissioner, upon 10 days' written notice to the licensee stating the contemplated action and the grounds for the action, and upon reasonable opportunity to be heard, may revoke any license if he or she finds any of the following:

(a) The licensee has failed, after 5 days' written notice of default, to pay the annual operating fee, to maintain the bond required under this act, or to comply with any demand, ruling, or requirement of the commissioner made under this act.

(b) The licensee either knowingly or without the exercise of due care has violated any provision of this act or any rule made by the commissioner under this act.

(c) Any fact or condition that exists which, if it had existed at the time of the original application for the license, would have warranted the commissioner in refusing originally to issue the license.

(2) If the commissioner finds that probable cause for revocation of any license exists and that the enforcement of the act requires immediate suspension of the license pending investigation, he or she may, upon 3 days' written notice and a hearing, suspend any license for a period not exceeding 30 days.

(3) A licensee may surrender its license by delivering to the commissioner written notice that it surrenders the license. The surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

(4) A revocation or suspension or surrender of a license does not impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

(5) The commissioner shall have authority to reinstate suspended licenses or to issue new licenses to a licensee whose license shall have been revoked if no fact or condition exists that clearly would have warranted the commissioner in refusing originally to issue the license.

(6) If the commissioner revokes or suspends a license, he or she shall file with the office of financial and insurance services a written transcript of the order containing the evidence and the reasons supporting the revocation or suspension, and serve upon the licensee a copy of the transcript.

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.9;—Am. 1971, Act 168, Eff. Mar. 30, 1972;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.9a Cease and desist order; grounds; notice; failure to appear at hearing; findings; effective date and duration of order.

Sec. 9a. (1) If in the opinion of the commissioner a licensee is, has, or is about to engage in a practice that poses a threat of financial loss or threat to the public welfare or is, has, or is about to violate a law or rule, the commissioner may serve a notice of intention to issue a cease and desist order as provided in subsection (2).

(2) A notice served under this section shall contain a statement of the facts constituting the alleged practice or violation and fix a time and place at which a hearing will be held to determine whether an order to cease and desist should be issued against the licensee.

(3) If the licensee fails to appear at the hearing by a duly authorized representative, the licensee shall have consented to the issuance of the cease and desist order.

(4) In the event of consent under subsection (3) or if, upon the record made at the hearing, the commissioner finds that the practice or violation specified in the notice has been established, the commissioner may serve upon the licensee an order to cease and desist from the practice or violation. The order may require the licensee and its officers, directors, members, partners, trustees, employees, agents, and control persons to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(5) Except as provided in subsection (6) or to the extent it is stayed, modified, terminated, or set aside by the commissioner or a court, a cease and desist order shall become effective on the date of service.

(6) A cease and desist order issued upon consent shall become effective at the time specified in the order and remain effective and enforceable as provided in the order.

History: Add. 2002, Act 393, Imd. Eff. May 30, 2002.

493.9b Investigation or examination by commissioner; complaint or action; suspension of license; request for hearing; duration of suspension.

Sec. 9b. (1) As provided in section 10, the commissioner may investigate or conduct an examination of any person and conduct hearings as the commissioner considers necessary to determine whether a licensee or any other person has violated this act, or whether a licensee has conducted business in a manner that would justify suspension or revocation of its license.

(2) Upon the filing of a complaint or the taking of action against a licensee under section 9c, the commissioner may issue and serve upon a licensee an order suspending that person's license. The order shall be supported by an affidavit from a person familiar with the facts set forth in the affidavit and shall contain information that an imminent threat of financial loss or threat to the public welfare exists.

(3) Upon service of the order under subsection (2), the licensee shall have 20 days to file with the commissioner a request for a hearing. The hearing shall be scheduled within 20 days of the receipt of a request filed under this subsection.

(4) A suspension of a license under this section shall continue until the commissioner finds that the threat of financial loss or threat to the public welfare no longer exists.

History: Add. 2002, Act 393, Imd. Eff. May 30, 2002.

493.9c Fraud.

Sec. 9c. (1) If in the opinion of the commissioner a person has engaged in fraud, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or control person of a licensee under this act or a licensee or registrant under a financial licensing act. For purposes of this section, "fraud" shall include actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a hearing to be held not more than 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or control person of any licensee under this act or a licensee or registrant under a financial licensing act.

(4) An order issued under subsection (2) or (3) is effective upon service upon the person. The commissioner shall also serve a copy of the order upon the licensee of which the person is an employee, agent, or control person. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to applicants for loans, mortgage loans, secondary mortgage loans, credit card arrangements, or installment sales credit, borrowers on loans, obligors on installment sale contracts, loan servicing customers, purchasers of mortgage loans or interests in mortgage loans, or purchasers of checks from a licensee, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or control person of any licensee. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect pending the completion of a review as provided under this section and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the hearing required under subsection (2) to review the suspension shall be held not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a felony involving fraud, dishonesty, or breach of trust, the commissioner may issue an order suspending or prohibiting that person from being a licensee and from being employed by, an agent of, or control person of any licensee under this act or a licensee or registrant under a financial licensing act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

(9) the commissioner shall mail a copy of any notice or order issued under this section to the licensee of which the person subject to the notice or order is an employee, agent, or control person.

History: Add. 2002, Act 393, Imd. Eff. May 30, 2002.

493.9d Hearing; decision; findings; judicial review; stay.

Sec. 9d. (1) A hearing under sections 9, 9a, and 9c shall be conducted under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Within 30 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render a decision that shall include findings of fact supporting the decision and serve upon each party to the proceeding a copy of the decision and an order consistent with the decision.

(2) Except for a consent order, a party to the proceeding or a person affected by an order issued under sections 9, 9a, and 9c may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

(3) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (2) does not stay the commissioner's order.

History: Add. 2002, Act 393, Imd. Eff. May 30, 2002.

493.9e Enforcement of order; jurisdiction.

Sec. 9e. The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under section 9, 9a, 9b, or 9c.

History: Add. 2002, Act 393, Imd. Eff. May 30, 2002.

493.9f Violation as misdemeanor; penalty.

Sec. 9f. Any current or former executive officer, director, agent, or control person who violates a final order issued under section 9c is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

History: Add. 2002, Act 393, Imd. Eff. May 30, 2002.

493.9g Violation of order; exceptions.

Sec. 9g. A control person who is subject to an order issued under section 9c and who meets all of the following requirements is not in violation of the order:

(a) The control person shall not in any manner, directly or indirectly, participate in the control of a licensee after the date the order is issued.

(b) The control person shall within 6 months after the date the order is final transfer any interest the control person owns in a licensee to an unrelated third party.

History: Add. 2002, Act 393, Imd. Eff. May 30, 2002.

493.10 Commissioner of state banking department; authority to investigate business and examine records; witnesses; examination of licensee; construction of section; disposition of fees.

Sec. 10. (1) For the purpose of investigating violations of this act or securing information lawfully required under this act, the commissioner may at any time, either personally or by a designated person or persons, investigate the loans and business and examine the books, accounts, records, and files used with the loans and business of any licensee or any person engaged in the business described in section 2. The commissioner and his or her duly designated representatives shall have and be given free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all persons investigated under this section. The commissioner and persons duly designated by him or her have the authority to require the attendance of and to examine under oath all persons whose testimony the commissioner may require relative to the loans or business or to the subject matter of an examination, investigation, or hearing.

(2) The commissioner at any time may investigate the business activities of a licensee as the commissioner considers necessary, examine the books, accounts, records, and files used and maintained by any licensee, and require the licensee to furnish additional reports relating to the licensee's business. The commissioner shall examine the books, accounts, records, and files of a licensee at least once during every 5-year period.

(3) This act shall not be construed to prohibit the keeping of records by electronic data processing methods.

(4) All fees collected under this section shall be paid into the state treasury and credited to the office of financial and insurance services.

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.10;—Am. 1991, Act 14, Eff. Oct. 1, 1991;—Am. 1996, Act 184, Imd. Eff. May 3, 1996;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the
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commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.11 Books, accounts, and records of licensee; preservation and accessibility; filing financial statement with commissioner; reports.

Sec. 11. (1) The licensee shall keep and use in the licensee's business the books, accounts, and records the commissioner may require in order to determine whether the licensee is complying with this act and with the rules promulgated by the commissioner under this act. The licensee shall preserve within this state and make accessible to the commissioner, the books, accounts, and records for at least 2 years after making the final entry on any loan recorded in the books, accounts, and records. Books and accounts may be kept at a location other than the licensee's principal place of business, provided that they are made available to the commissioner upon request and the licensee pays the actual and reasonable travel expenses if the examiner must travel out of state.

(2) The licensee shall file, annually on or before February 15 of each year, with the commissioner its financial statement in a uniform format prescribed by the commissioner, including information on earnings, for the prior calendar year.

(3) A licensee shall annually on or before a date established by the commissioner file with the commissioner a report, on a form provided by the commissioner, stating the licensee's volume and type of business activities for the immediately preceding calendar year. The commissioner shall provide at least 30 days' advance notice of the date each report is due.

(4) All reports shall be made under oath and shall be in the form prescribed by the commissioner.

(5) The commissioner shall make and publish annually an analysis and recapitulation of the reports filed under subsections (2) and (3).

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.11;—Am. 1983, Act 103, Imd. Eff. June 30, 1983;—Am. 1991, Act 14, Eff. Oct. 1, 1991;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.12 Statements or representations by licensee; lien on real estate; confession of judgment or power of attorney prohibited; note or evidence of indebtedness; blanks; discrimination on basis of sex or marital status prohibited.

Sec. 12. (1) A licensee or other person shall not advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever a false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action.

(2) A licensee shall not take a lien upon real estate as security for a loan made under this act, except a lien acquired by execution or otherwise after the entry of a judgment.

(3) A licensee shall not take a confession of judgment or a power of attorney to appear or to confess judgment on behalf of a borrower. A licensee shall not take a note or evidence of indebtedness that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of charge, or an instrument in which blanks are left to be filled in after execution.

(4) A licensee shall not discriminate against a person in the extension of credit on the basis of sex or marital status.

(5) Except as provided under section 9g, a licensee shall not knowingly permit a person to violate an order that has been issued under this act or any other financial licensing act that prohibits that person from being employed by, an agent of, or a control person of the licensee.

History: 1939, Act 21, Eff. Sept. 29, 1939;—Am. 1947, Act 130, Eff. Oct. 11, 1947;—CL 1948, 493.12;—Am. 1963, Act 103, Eff. Sept. 6, 1963;—Am. 1971, Act 168, Eff. Mar. 30, 1972;—Am. 1978, Act 528, Eff. Mar. 30, 1979;—Am. 1991, Act 14, Eff. Oct. 1, 1991;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002;—Am. 2002, Act 393, Imd. Eff. May 30, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.12a False, misleading, deceptive, or irresponsible advertising unlawful; definition; requirements for advertising.

Sec. 12a. (1) False, misleading, deceptive, or irresponsible advertising is unlawful and is defined as follows:

(a) Advertising which lures, entices, induces, or tends to induce a person to incur a debt by unreasonably

minimizing the consequences of assuming a legal repayment obligation or by depicting the assumption of a debt obligation as a frivolous transaction.

(b) Advertising that describes or depicts the benefits or advantages of having the money from a loan, without describing or depicting the obligation of repaying the loan with interest.

(c) Advertising with claims and representations that are not accurate or provable.

(d) Advertising which misrepresents facts or creates misleading impressions.

(e) Advertising which uses the phrase "lowest rates", "lowest rates in the city", or similar phrases unless the rates are actually lower than those of other lenders.

(f) Advertising which uses the phrase "new reduced rates", "new low rates", "reduced rates", or similar phrases for more than 60 days after the changed rates become effective.

(g) Advertising which causes a probability of confusion or misunderstanding as to the legal rights, obligations, or remedies of a lender, or as to the terms or conditions of credit.

(h) Advertising which represents that a borrower will receive a rebate, discount, or other benefit as an inducement for entering into a transaction, if the benefit is contingent on an event to occur subsequent to the consummation of the transaction.

(i) Advertising which suggests or infers that a loan is not a loan, or that interest is not charged, or that the borrower is not under an obligation to repay.

(2) A licensee shall not advertise any size of loan, security required for a loan, rate of charge, or other condition of lending except with the full intent of making loans at those rates, or lower rates, and under those conditions, to applicants who meet the standards or qualifications prescribed.

History: Add. 1978, Act 528, Eff. Mar. 30, 1979;—Am. 1991, Act 14, Eff. Oct. 1, 1991;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.12b Repealed. 1991, Act 14, Eff. Oct. 1, 1991.

Compiler's note: The repealed section pertained to licensee promotional plans.

493.12c False, misleading, deceptive, or irresponsible advertising; report to attorney general; action to restrain by temporary or permanent injunction; costs; civil penalty; notice to licensee; assurance of discontinuance; violation subject to civil penalty; jurisdiction, continuance of cause, and petition for recovery of civil penalty; effect of action or failure to act by commissioner.

Sec. 12c. (1) If the commissioner has probable cause to believe that a licensee has engaged, is engaged, or is about to engage in advertising that is false, misleading, deceptive, or irresponsible as defined in section 12a, and upon notice given in accordance with this section, the commissioner shall report the matter to the attorney general. The attorney general or the commissioner may bring an action to restrain the licensee by temporary or permanent injunction from engaging in the advertising. The action may be brought in the circuit court for the county where the licensee is established or conducts business or in the circuit court for Ingham county. The court may award costs to the prevailing party. For persistent and knowing violation of section 12a the court may assess the defendant a civil penalty of not more than \$5,000.00.

(2) Unless waived by the court on good cause shown, not less than 10 days before the commencement of a proceeding under this section the commissioner shall notify the licensee of the intended referral to the attorney general and provide the licensee an opportunity to cease and desist from the alleged unlawful advertising or to confer with the commissioner in person, by counsel, or by other representative as to the proposed action before the proposed filing date.

(3) Service of the notice may be given to the licensee by mail, postage prepaid, to the licensee's usual place of business or, with respect to a corporation, only to a resident agent who is designated to receive service of process or to an officer of the corporation.

(4) If the commissioner has authority to institute a proceeding under this section, the commissioner, upon the concurrence of the attorney general, may accept an assurance of discontinuance of advertising that is alleged to be unlawful under section 12a from the person who is alleged to have engaged, be engaging, or be about to engage in the advertising. The assurance does not constitute an admission of guilt nor can it be introduced in any other proceeding. An assurance of discontinuance shall be in writing and filed with the circuit court for Ingham county. The clerk of the court shall maintain a record of the filings. Unless rescinded by the parties or voided by the court for good cause, the assurance may be enforced in the circuit court by the parties to the assurance. The assurance may be modified by the parties or by the court for good cause.

(5) A person who knowingly violates the terms of an injunction, order, decree, or judgment issued under this section is subject to a civil penalty of not more than \$500.00 for each violation. For the purposes of this section, the court issuing an injunction, order, decree, or judgment shall retain jurisdiction, and the cause shall be continued. The attorney general or the commissioner may petition for recovery of a civil penalty as provided by this section.

(6) The action or the failure to act by the commissioner under this section shall not be considered specific authorization of conduct barring the attorney general from bringing an action under the Michigan consumer protection act, 1976 PA 331, MCL 445.901 to 445.922.

History: Add. 1978, Act 528, Eff. Mar. 30, 1979;—Am. 1992, Act 71, Imd. Eff. June 2, 1992;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.12d Action to enjoin licensee from advertising; circuit court.

Sec. 12d. A person may bring an action in the circuit court of the county in which an office of a licensee is located, or in the circuit court for Ingham county, to enjoin a licensee from advertising in violation of section 12a.

History: Add. 1978, Act 528, Eff. Mar. 30, 1979;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.13 Limitation on amount of loan and interest charge; obligation under more than 1 loan contract; computation and payment of charges; loan processing fee; fees; amount other than or in excess of charges permitted by act; penalties; "open-end credit" defined.

Sec. 13. (1) A licensee may lend money and may contract for, compute, and receive interest charges on the loan at a rate that does not exceed the rate permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864. A loan by a licensee may be 1 of the following:

(a) A closed-end loan.

(b) Open-end credit consisting of direct advances from the licensee or checks issued by the licensee. This subdivision does not apply to open-end credit available through the use of a credit card or charge card.

(2) A licensee shall not induce a person to become directly obligated under more than 1 loan contract not secured by personal property at the same time.

(3) Charges on loans made under this act shall not be paid, deducted, or received in advance, or compounded. All charges on loans made under this act shall be computed on the unpaid principal balance or portions of the balance, specifically expressed in every obligation signed by the borrower, and computed on the basis of the number of days actually elapsed.

(4) In addition to the interest and charges provided for in this act, a loan processing fee not to exceed 5% of the principal, up to \$250.00, may be charged for each closed-end loan made, and may be included in the principal of the loan. The \$250.00 limit on the loan processing fee shall be adjusted every 2 years to reflect the percentage change in the United States consumer price index for the 2 immediately preceding calendar years, rounded to the nearest hundred dollars. As used in this subsection, "United States consumer price index" means the United States consumer price index for all urban consumers in the United States city average, as defined and reported by the United States department of labor, bureau of labor statistics, and after certification by the commissioner. A licensee may require the borrower to pay the late charges permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864. A licensee shall not induce or permit a person to become obligated, directly or contingently, under more than 1 loan contract not secured by personal property at the same time for the purpose or with the result of obtaining a loan processing fee not otherwise permitted by this section. No other amount shall be directly or indirectly charged, contracted for, or received, except the lawful fees, if any, actually and necessarily paid by the licensee to a governmental entity for the filing, recording, or releasing of either of the following:

(a) A financing statement or an instrument securing the loan, or both.

(b) A record noting or releasing a lien or transferring a certificate of title under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(5) The fees permitted under this section may be collected at any time on or after the date the loan is made.

(6) A licensee may charge a handling fee for the return of an unpaid and dishonored check, draft, negotiable order, or similar instrument given to the licensee in full or partial repayment of a loan as authorized

by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(7) A licensee may recover from the borrower the costs and expenses of retaking, holding, repairing, preparing for sale, and selling any personal property in accordance with sections 9609 and 9615 of the uniform commercial code, 1962 PA 174, MCL 440.9609 and 440.9615.

(8) A licensee may charge a reasonable annual fee for the privilege of receiving open-end credit from the licensee.

(9) A licensee may charge a reasonable fee per payment if a borrower makes a payment or payments by authorizing a licensee verbally or in writing to execute a debit or otherwise process a payment, through automated clearing procedures, drawn on the borrower's deposit account. This subsection shall not be construed to permit the imposition of a fee in cases where the borrower, at the time of consummation of the loan, authorizes the licensee to effect all periodic installment payments by way of electronic automated clearing procedures drawn on the borrower's deposit account.

(10) In addition to the penalties provided by this act, a violation of this act with respect to a particular regulatory loan transaction is also subject to the penalty and remedy provisions of the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(11) As used in this section, "open-end credit" means credit that is not secured by an interest in real property and is extended under a plan in which both of the following apply:

(a) The licensee reasonably contemplates repeated transactions.

(b) The amount of credit that may be extended to the borrower during the term of the plan is generally made available to the extent that any part of the outstanding balance is repaid.

History: 1939, Act 21, Eff. Sept. 29, 1939;—Am. 1947, Act 130, Eff. Oct. 11, 1947;—CL 1948, 493.13;—Am. 1963, Act 103, Eff. Sept. 6, 1963;—Am. 1971, Act 168, Eff. Mar. 30, 1972;—Am. 1978, Act 528, Eff. Mar. 30, 1979;—Am. 1991, Act 14, Eff. Oct. 1, 1991;—Am. 1994, Act 142, Imd. Eff. May 27, 1994;—Am. 1995, Act 165, Eff. Mar. 28, 1996;—Am. 1996, Act 184, Imd. Eff. May 3, 1996;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.13a Credit life insurance; other insurance.

Sec. 13a. (1) In addition to charges allowed under section 13, at the option of the borrower, a licensee may obtain or provide 1 or both of the following and deduct from the principal of a loan and retain an amount equal to the premium lawfully charged by the insurance company:

(a) Credit insurance as defined in the credit insurance act, 1958 PA 173, MCL 550.601 to 550.624.

(b) Any other insurance under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302.

(2) The insurance permitted by this section shall be in force when the loan is made. If the borrower obtains the insurance from or through a licensee, the statement required by section 14 shall show the cost of the insurance and the licensee shall provide to the borrower a copy of the policy, certificate, or other evidence of the insurance. This act does not prohibit the licensee or any employee, affiliate, subsidiary, or associate of the licensee from collecting the premium or identifiable charge for the insurance permitted by this section or from receiving and retaining any gain or other benefit resulting from the insurance. A licensee shall not require the purchase of insurance as a condition precedent to the making of a loan.

History: Add. 1963, Act 103, Eff. Sept. 6, 1963;—Am. 1971, Act 168, Eff. Mar. 30, 1972;—Am. 1978, Act 528, Eff. Mar. 30, 1979;—Am. 1991, Act 14, Eff. Oct. 1, 1991;—Am. 1994, Act 407, Eff. Mar. 30, 1995;—Am. 1996, Act 184, Imd. Eff. May 3, 1996;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.14 Licensee; duties.

Sec. 14. A licensee shall:

(a) Deliver to the borrower a disclosure statement in compliance with 12 C.F.R. part 226.

(b) Give to the borrower a plain and complete receipt for cash payments made on account of a loan at the time the payments are made, specifying the amount applied to charges and the amount, if any, applied to principal, and stating the unpaid principal balance of the loan. An unitemized receipt may be given temporarily and within 30 days a receipt as prescribed above delivered or mailed.

(c) Permit payment to be made in advance in any amount on any contract of loan at any time during regular business hours, but the licensee may apply that payment first to all charges in full at the agreed rate up to the date of the payment.

(d) Upon repayment of the loan in full, mark plainly every obligation and security signed by the borrower

with the word “Paid” or “Canceled”, and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given to the licensee by the borrower.

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.14;—Am. 1963, Act 103, Eff. Sept. 6, 1963;—Am. 1978, Act 528, Eff. Mar. 30, 1979;—Am. 1991, Act 14, Eff. Oct. 1, 1991;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.14a Compliance with federal consumer credit protection act.

Sec. 14a. Compliance with the requirements of the consumer credit protection act, Public Law 90-321, 82 statute 146, commonly referred to as the federal truth in lending act is compliance with section 12 as to advertising, section 13a as to cost of insurance, and section 14.

History: Add. 1971, Act 168, Eff. Mar. 30, 1972;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.15 Contract in compliance with retail installment sales act or home improvement finance act.

Sec. 15. A licensee may purchase a contract made in compliance with the retail installment sales act, 1966 PA 224, MCL 445.851 to 445.873, or the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

History: 1939, Act 21, Eff. Sept. 29, 1939;—Am. 1947, Act 130, Eff. Oct. 11, 1947;—CL 1948, 493.15;—Am. 1963, Act 103, Eff. Sept. 6, 1963;—Am. 1971, Act 168, Eff. Mar. 30, 1972;—Am. 1978, Act 528, Eff. Mar. 30, 1979;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.15a Regulatory loan contract; nonperformance by borrower; advances by licensee; termination of insurance upon reinstatement of contractual duties by borrower.

Sec. 15a. (1) If a regulatory loan contract contains obligations by the borrower to perform certain duties pertaining to insuring or preserving collateral and the licensee, because of the borrower's failure to perform these duties, pays for performance of the duties on behalf of the borrower, the licensee may add the amounts paid to the debt and collect interest at the contract rate on the amounts.

(2) Within 30 days after advancing any sums under this section, the licensee shall notify the borrower in writing of the amount of the sums advanced, any charges with respect to this amount, any revised payment schedule, and a brief description of the services or products paid for by the licensee, including the type and amount of insurance coverages, if applicable.

(3) The licensee shall promptly terminate insurance or other services procured under this section once the borrower provides evidence that the performance of contractual duties have been reinstated.

History: Add. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

493.16 Repealed. 1978, Act 528, Eff. Mar. 30, 1979.

Compiler's note: The repealed section pertained to sale or assignment of wages as loans.

493.17 Assignment or order for payment of compensation to secure loan invalid; validity of chattel mortgage or lien on household goods; married borrower; signatures; written assent of spouse.

Sec. 17. (1) An assignment of, or order for payment of, salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure a loan made by a licensee under this act, shall not be valid. A chattel mortgage or other lien on household goods then in the possession and use of the borrower shall not be valid unless it is in writing and signed in person by the borrower.

(2) If the borrower is married, a chattel mortgage or other lien on household goods shall not be valid unless it is signed in person by both husband and wife. The written assent of a spouse under this section shall not be required when husband and wife have been living separate and apart for a period of not less than 5 months before the making of the chattel mortgage or other lien.

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.17;—Am. 1980, Act 392, Eff. Mar. 31, 1981;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.18 Unlicensed persons; limitation on interest, discount, or consideration; applicability of act to loans made in another state or country.

Sec. 18. (1) A person, except as authorized by this act, shall not directly or indirectly charge, contract for, or receive an interest, discount, or consideration greater than the lender would be permitted by law to charge if the lender were not licensed under this act upon the loan, use, or forbearance of money, goods, or things in action.

(2) The prohibition specified in subsection (1) applies to a person who or which, by any device, subterfuge, or pretense charges, contracts for, or receives greater interest, consideration, or charges than authorized by this act for the loan, use, or forbearance of money, goods, or things in action or for the loan, use, or sale of credit.

(3) This act does not apply to loans legally made in another state or country by a licensee under a regulatory loan law similar in principle to this act, except that loans made by mail to Michigan residents are subject to this act.

History: 1939, Act 21, Eff. Sept. 29, 1939;—Am. 1947, Act 130, Eff. Oct. 11, 1947;—CL 1948, 493.18;—Am. 1963, Act 103, Eff. Sept. 6, 1963;—Am. 1971, Act 168, Eff. Mar. 30, 1972;—Am. 1978, Act 528, Eff. Mar. 30, 1979;—Am. 1995, Act 165, Eff. Mar. 28, 1996;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.19 Violation as misdemeanor; penalty.

Sec. 19. (1) A person, including a member, officer, director, agent, or employee of a licensee, who violates or participates in the violation of section 1, 12, 13, 14, or 18 is guilty of a misdemeanor punishable by a fine of not more than \$500.00, or imprisonment for not more than 6 months, or both.

(2) A person who makes or collects upon a loan contract in a manner prohibited by this act is guilty of a misdemeanor under section and is subject to the credit reform act.

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.19;—Am. 1978, Act 528, Eff. Mar. 30, 1979;—Am. 1991, Act 14, Eff. Oct. 1, 1991;—Am. 1995, Act 165, Eff. Mar. 28, 1996.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.20 Businesses exempt from act.

Sec. 20. This act shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, industrial banks, trust companies, building and loan associations, or credit unions, nor to any business transacted under any pawnbroker's license.

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.20.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.21 Enforcement of act; rules.

Sec. 21. The commissioner may promulgate rules that are necessary for the administration and enforcement of this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.21;—Am. 1971, Act 168, Eff. Mar. 30, 1972;—Am. 1978, Act 528, Eff. Mar. 30, 1979;—Am. 1991, Act 14, Eff. Oct. 1, 1991;—Am. 1992, Act 71, Imd. Eff. June 2, 1992;—Am. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Administrative rules: R 493.1 et seq. of the Michigan Administrative Code.

493.22 Amendments or repeals of act; impairment of obligation.

Sec. 22. This act or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided that such cancellation or alteration shall

not impair or affect the obligation of any pre-existing lawful contract between any licensee and any borrower.

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.22.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.23 Repealed. 1991, Act 14, Eff. Oct. 1, 1991.

Compiler's note: The repealed section pertained to licensees under former act.

493.24 Review of decisions and regulations; limitations; method; jurisdiction of courts.

Sec. 24. Any applicant under section 4 of this act or any licensee, being dissatisfied with any rule, regulation, order, demand, ruling, or finding (hereinafter in this section referred to as an order) whatsoever, made by the commissioner under and by virtue of the provisions of this act, may, within 30 days from the issuance of such order and the giving of notice thereof as required herein, commence an action in the circuit court in chancery for the county of Ingham, or in the chancery court of the county in which is located the place of business of such licensee or applicant concerning which such rule, regulation, order, demand, ruling or finding was made, against the commissioner as defendant to vacate and set aside such order on the ground that the same is unlawful or unreasonable or not correct as to the facts, or that any regulation or practice fixed in such order is unlawful or unreasonable. In such action the trial shall be de novo and the court shall not be bound by any finding of fact or law on the part of the commissioner, and the burden of proof shall be on the commissioner. The same shall proceed, be tried and determined as other chancery suits and appeal therefrom may be taken by any party to the supreme court in the same manner as from other chancery suits. Any party to such suit may introduce original evidence in addition to the transcript of evidence taken before the commissioner. The said circuit court in chancery is hereby given jurisdiction of such suits and empowered to affirm, modify, vacate, or set aside the order of the commissioner in whole or in part and to make such other order or decree as the court shall decide to be proper and in accordance with the facts and the law. In all actions and proceedings in court arising under this section of this act, all process shall be served and the practice and rules of evidence shall be the same as in actions in equity except as otherwise herein provided.

History: 1939, Act 21, Eff. Sept. 29, 1939;—CL 1948, 493.24.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.25 Repealed. 2001, Act 270, Imd. Eff. Jan. 11, 2002.

Compiler's note: The repealed section pertained to certified copy of order as evidence.

493.26 Repealed. 1991, Act 14, Eff. Oct. 1, 1991.

Compiler's note: The repealed section contained a repealer and saving clause.

THE SECONDARY MORTGAGE LOAN ACT

Act 125 of 1981

AN ACT to regulate secondary mortgage loans; to regulate secondary mortgage brokers, lenders, servicers, and loan officers; to prescribe powers and duties of certain state agencies and officials; to require certain fees; to provide for the establishment of a revolving fund; to provide for the promulgation of rules; and to provide remedies and prescribe penalties.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1988, Act 444, Imd. Eff. Dec. 27, 1988;—Am. 1989, Act 66, Imd. Eff. June 16, 1989;—Am. 1995, Act 164, Eff. Mar. 28, 1996;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997;—Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

Popular name: Secondary Mortgage Loan Act

The People of the State of Michigan enact:

493.51 Short title; definitions.

Sec. 1. (1) This act shall be known and may be cited as "the secondary mortgage loan act".

(2) As used in this act:

(a) "Broker" means a person who, directly or indirectly, does 1 or both of the following:

(i) Serves or offers to serve as an agent for a person attempting to obtain a secondary mortgage loan.

(ii) Serves or offers to serve as an agent for a person who makes or offers to make a secondary mortgage loan.

(b) "Commissioner" means the commissioner of the office of financial and insurance regulation of the department of energy, labor, and economic growth or his or her authorized representatives.

(c) "Control person" means a director or executive officer of a licensee or registrant or a person who has the authority to participate in the direction, directly or indirectly through 1 or more other persons, of the management or policies of a licensee or registrant.

(d) "Depository financial institution" means a state or nationally chartered bank, state or federal chartered savings and loan association, savings bank, or credit union, or any other institution whose deposits are insured by an agency of the federal government.

(e) "Exclusive broker" means a person that brokers secondary mortgage loans solely to 1 licensee or registrant, is compensated solely by that licensee or registrant, and is indemnified by the licensee or registrant as provided in section 6. The actions or practices of an exclusive broker in brokering a secondary mortgage loan are the actions or practices of the licensee or registrant.

(f) "Executive officer" means an officer, member, or partner of a licensee or registrant. The term includes the chief executive officer, president, vice president, chief financial officer, controller, or compliance officer, or an individual holding any other similar position.

(g) "Financial licensing act" means any of the financial licensing acts, as that term is defined in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(h) "Lender" means a person who, directly or indirectly, makes or offers to make secondary mortgage loans.

(i) "Licensee" means a person licensed or required to be licensed under this act.

(j) "Loan servicing customer" means a mortgagor whose secondary mortgage loan is being serviced by a servicer.

(k) "Open-end credit" means credit extended under a plan in which both of the following apply:

(i) The licensee or registrant reasonably contemplates repeated transactions.

(ii) The amount of credit that may be extended to the borrower during the term of the plan is generally made available to the extent that any part of the outstanding balance is repaid.

(l) "Originate" means any of the following:

(i) To negotiate, arrange, or offer to negotiate or arrange a secondary mortgage loan between a lender and 1 or more individuals.

(ii) To place, assist in placing, or find a secondary mortgage loan for 1 or more individuals.

(m) "Person" means an individual, corporation, limited liability company, partnership, association, or other legal entity.

(n) "Registrant" means a person that is registered or required to register as a broker, lender, or servicer under this act. The term does not include a secondary mortgage loan officer registrant or depository financial institution.

(o) "Secondary mortgage loan" means a loan that has a term of 90 days or more; that is made to a person for personal, family, or household purposes; and that is secured by a mortgage on an interest in real property

that is used as a dwelling and is subject to a lien of 1 or more outstanding mortgages. A secondary mortgage loan may be secured by other collateral in addition to real property. Notwithstanding the place of execution, nominal or real, of a secondary mortgage loan, if the real property that secures the loan is located in this state, a secondary mortgage loan is subject to this act and all other applicable laws of this state.

(p) "Secondary mortgage loan officer" means an individual who is an employee or agent of a broker, lender, or servicer; who originates secondary mortgage loans; and who is not an employee of a depository financial institution or a subsidiary or affiliate of a depository financial institution.

(q) "Secondary mortgage loan officer registrant" means either of the following:

(i) An individual who is currently registered under section 2a or 2c.

(ii) An individual who is not required to register to perform services of a secondary mortgage loan officer under section 2a(9).

(r) "Service" means the collection or remittance for a lender, noteowner, or noteholder or a licensee's own account of 4 or more installment payments of the principal of, interest of, or an amount placed in escrow under a secondary mortgage loan, mortgage servicing agreement, or an agreement with a mortgagor.

(s) "Servicer" means a person who, directly or indirectly, services or offers to service secondary mortgage loans.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1989, Act 66, Imd. Eff. June 16, 1989;—Am. 1995, Act 164, Eff. Mar. 28, 1996;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997;—Am. 2002, Act 392, Imd. Eff. May 30, 2002;—Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.52 Broker, lender, or servicer; license or registration required; exemption; use of name or assumed name.

Sec. 2. (1) A person shall not act as a broker, lender, or servicer without first obtaining a license under this act or registering under section 3a, unless 1 or more of the following apply:

(a) The person is providing secondary mortgage loan officer services as an employee or agent of only 1 broker, lender, or servicer and is registered as a secondary mortgage loan officer registrant if that registration is required under this act.

(b) The person is an exclusive broker. This subdivision does not apply after March 31, 2009.

(c) The person is licensed under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072.

(d) The person acts as a lender but makes or negotiates 2 or fewer secondary mortgage loans in a calendar year.

(e) The person acts as a servicer but services 10 or fewer secondary mortgage loans in a calendar year.

(f) The person is an individual and an employee of a professional employer organization, as that term is defined in section 113 of the Michigan business tax act, 2007 PA 36, MCL 208.1113, solely acting as a secondary mortgage loan originator of only 1 broker or lender. The broker or lender shall do all of the following:

(i) Direct and control the activities of the individual under this act.

(ii) Be responsible for all activities of the individual and assume responsibility for the individual's actions that are covered by the proof of financial responsibility deposit required under section 6.

(2) By October 31, 1997, a servicer that was exempt from regulation under this act shall either file with the commissioner an application for a license or registration under section 3 or discontinue all activities subject to this act.

(3) Except for a state or nationally chartered bank, savings bank, or an affiliate of a bank or savings bank, a person subject to this act shall not include in its name or assumed name the words "bank", "banker", "banc", "bankcorp", "bancorp", or any other words or phrases that would imply that the person is a bank, is engaged in the business of banking, or is affiliated with a bank or savings bank. It is not a violation of this subsection for a licensee to use the term "mortgage banker" or "mortgage banking" in its name or assumed name.

(4) A person subject to this act whose name or assumed name on January 1, 1997 contained a word prohibited by subsection (3) may continue to use that name or assumed name.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1988, Act 164, Eff. Sept. 1, 1988;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997;—Am. 2007, Act 46, Imd. Eff. July 17, 2007;—Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender

may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.52a Performance of services as secondary mortgage loan officer; requirements; criminal history check; registration; application; form; information to be provided; performance of services while application pending; issuance of registration; waiver of requirements; individual considered as secondary mortgage loan officer registrant.

Sec. 2a. (1) Beginning April 1, 2009, an employee or agent of a licensee or registrant, other than an individual described in subsection (9), shall not perform services of a secondary mortgage loan officer unless he or she registers or otherwise complies with this section.

(2) A licensee or registrant that employs or offers to employ, or engages or offers to engage as an agent, an individual, other than an individual described in subsection (9), as a secondary mortgage loan officer to originate secondary mortgage loans after March 31, 2009 shall conduct a criminal history check of that individual. All of the following apply to the criminal history check of an individual required under this subsection:

(a) The department of state police and the federal bureau of investigation shall perform the criminal history check required under this subsection.

(b) The individual who is the subject of the criminal history check shall have his or her fingerprints taken by a law enforcement agency or by another person that the commissioner determines is qualified to take fingerprints; pay the agency or person the fees required by the department of state police under section 3 of 1935 PA 120, MCL 28.273, and by the federal bureau of investigation, for processing fingerprints and completing a criminal history check; and request that the agency or person forward the fingerprints, a request for a criminal history check of the individual in the format and as prescribed by the department of state police, and the fees to the department of state police.

(c) The department of state police shall forward the fingerprints and appropriate fee to the federal bureau of investigation for a national criminal history check.

(d) After receiving a proper request and the required fees under this subsection, the department of state police shall conduct the criminal history check and provide the licensee or registrant with the results of the criminal history check. The results shall contain any criminal history record information concerning the individual maintained by the department of state police and the results of the federal bureau of investigation's criminal history check.

(e) The licensee or registrant shall submit the results of the criminal history check described in subdivision (d) to the commissioner with the application for secondary mortgage loan officer registration described in subsection (4) or for purposes of subsection (5).

(f) The criminal history check required under this subsection may be conducted by the licensee or registrant, requested of and performed by the department of state police and the federal bureau of investigation, and submitted to the commissioner at any time on or after January 1, 2009.

(g) If a criminal arrest fingerprint card is subsequently submitted to the department of state police and matches against a fingerprint that was submitted under this subsection and stored by the department of state police in its automated fingerprint identification system (AFIS) database, the department of state police shall notify the commissioner.

(3) Beginning April 1, 2009, if an individual, other than an individual described in subsection (9), is employed or engaged as an agent to originate secondary mortgage loans by a licensee or registrant, that individual shall apply for secondary mortgage loan officer registration under this section within 90 days after he or she begins providing services as an employee or agent of the licensee or registrant, by submitting the application described in subsection (4), in writing, and including with the application the annual operating fee established under section 6a(6).

(4) The commissioner shall prescribe the form of application for registration as a secondary mortgage loan officer. Subject to subsection (8), the application form shall require that an applicant provide at least all of the following to the commissioner:

(a) The name and home address of the applicant.

(b) A statement as to whether the applicant has ever been convicted of, or pled no contest to, any of the following:

(i) A misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities.

(ii) A felony.

(c) A statement as to whether the applicant has had an application denied, or a license, registration, or similar authority revoked or suspended, to practice any profession or occupation in any jurisdiction, including, but not limited to, licensure or registration as a broker, lender, or servicer in which the applicant held more than 25% of the ownership interest or as a secondary mortgage loan officer.

(d) Except for an application described in subsection (7), proof in the form of a certificate of completion or other evidence acceptable to the commissioner that the applicant has completed at least 24 hours of live professional classroom instruction in this state in an introductory course in residential mortgage lending that is sponsored or provided by a person, and taught by an instructor, approved by the commissioner. The 24 hours of instruction shall include at least 3 hours of live classroom instruction concerning state and federal laws and regulations governing residential mortgage lending, the content of which has been approved by the commissioner.

(e) Evidence acceptable to the commissioner that the applicant correctly answered at least 75% of the questions on an examination approved by the commissioner that tests an applicant's knowledge of the contents of the introductory course in residential mortgage lending described in subdivision (d).

(f) The results of the criminal history check described in subsection (2).

(g) The signature of the applicant and his or her declaration that the information and statements made in or included with the application are true, accurate, and complete.

(h) The signature of an executive officer on behalf of the licensee or registrant that employs or offers to employ, or engages or offers to engage as an agent, the applicant, and the executive officer's certification on behalf of the licensee or registrant that the information and statements in or included with the application are true, accurate, and complete to the best of his or her knowledge and belief.

(i) Any other information required by the commissioner.

(5) Beginning April 1, 2009, an applicant for secondary mortgage loan officer registration may perform services as a secondary mortgage loan officer while his or her application is pending if all of the following are met:

(a) The licensee or registrant that is the employer or principal of the applicant has completed the criminal history check of the applicant described in subsection (2) and submitted the results of that criminal history check to the commissioner.

(b) The criminal history check described in subdivision (a) does not disclose that the applicant has been convicted of, or pled no contest to, any of the following:

(i) A felony or misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities.

(ii) Within the 10-year period preceding the date of the application, a felony other than a felony described in subparagraph (i).

(c) The licensee or registrant that is the employer or principal of the applicant has provided the commissioner with written notice that the applicant is beginning to provide services as a secondary mortgage loan officer for the licensee or registrant.

(6) The commissioner shall not issue a registration to any of the following:

(a) An applicant who has been convicted of, or pled no contest to, any of the following:

(i) A felony or misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities.

(ii) Within the 10-year period preceding the date of the application, a felony other than a felony described in subparagraph (i).

(b) An applicant against whom the commissioner has issued a prohibition order under section 14a.

(c) An applicant for whom the commissioner has not received the results of the criminal history check described in subsection (2).

(d) An individual described in subsection (9).

(7) The commissioner must register a secondary mortgage loan officer who meets all of the following:

(a) For the 5-year period immediately preceding the effective date of the amendatory act that added this section, he or she was employed or engaged as a secondary mortgage loan officer for at least 4-1/2 years by 1 or more licensees, registrants, or persons exempt from this act under section 29 or 29a.

(b) He or she was not the subject of any prohibition orders issued by the commissioner under section 14a in the 5-year period immediately preceding the effective date of the amendatory act that added this section.

(c) Before April 1, 2009, he or she takes the examination described in subsection (4)(e) and correctly answers at least 75% of the questions on the examination.

(d) Before April 1, 2009, he or she submits an application under subsection (4). However, the applicant is not required to complete or submit proof of completion of the instruction described in subsection (4)(d).

(e) He or she is not an applicant described in subsection (6).

(8) The commissioner may waive any of the requirements of this section for secondary mortgage loan

officer registration if the applicant has a valid, similar license or registration from another state that has a reciprocal agreement with the commissioner, except subsection (6)(a) and (c).

(9) Beginning April 1, 2009, an individual who meets all of the following may perform services of a secondary mortgage loan officer without registering under or otherwise complying with this section:

(a) Is an employee or agent of a broker, lender, or servicer that is also a mortgage broker, mortgage lender, or mortgage servicer under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(b) Is currently registered as a loan officer under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(10) An individual described in subsection (9) is considered a secondary mortgage loan officer registrant for purposes of this act.

History: Add. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

493.52b Certain information available to the public; use of title or designation; receipt of remuneration or benefits; conditions; payment of remuneration or benefits prohibited.

Sec. 2b. (1) The commissioner may disclose, provide, or make available to the public the names, business addresses, and business telephone numbers of secondary mortgage loan officer registrants. The commissioner shall not disclose, provide, or make available to the public any other personal identifying information about secondary mortgage loan officer registrants or applicants for secondary mortgage loan officer registration.

(2) Beginning April 1, 2009, an individual employed or engaged as an agent by a licensee or registrant as a secondary mortgage loan officer shall not use the title or designation "loan officer", "loan originator", "mortgage loan officer", "mortgage loan originator", "secondary mortgage loan officer", or "secondary mortgage loan originator" if he or she is not a secondary mortgage loan officer registrant. A secondary mortgage loan officer registrant and the employer or principal of a secondary mortgage loan officer registrant shall not use the word "registered", "certified", or any word of similar import in his or her title or designation to identify him or her as an individual who has met the registration requirements of this act unless use of that word is approved by the office of financial and insurance regulation.

(3) Beginning April 1, 2009, a secondary mortgage loan officer shall not directly or indirectly receive any compensation, commission, fee, points, or other remuneration or benefits for originating a secondary mortgage loan unless both of the following are met:

(a) The secondary mortgage loan officer is a secondary mortgage loan officer registrant or exempt under section 2a(9).

(b) The compensation, commission, fee, points, or other remuneration or benefits are paid by the licensee or registrant for which the secondary mortgage loan officer originated that secondary mortgage loan.

(4) Beginning April 1, 2009, a broker, lender, or servicer shall not directly or indirectly pay any compensation, commission, fee, points, or other remuneration or benefits to any of the following:

(a) A secondary mortgage loan officer who is not a secondary mortgage loan officer registrant.

(b) A secondary mortgage loan officer registrant who is not an employee or agent of that broker, lender, or servicer. As used in this subdivision, "employee" means that term as defined in section 3401 of the internal revenue code, 26 USC 3401.

History: Add. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

493.52c Secondary mortgage loan officer registration; validity; duration; application for renewal; requirements.

Sec. 2c. (1) A secondary mortgage loan officer registration is valid for 1 calendar year and terminates on December 31 unless it is renewed on or before that date.

(2) Subject to subsection (6), to renew the secondary mortgage loan officer registrations of any employees or agents of a licensee or registrant, the licensee or registrant shall submit an application for renewal before December 1 of the year of the current secondary mortgage loan officer registrations. The licensee or registrant shall include with the application the annual operating fee established in section 6a(6) for each secondary mortgage loan officer registrant included in the application.

(3) The commissioner shall prescribe the form of the application for renewal of secondary mortgage loan officer registrations under subsection (2) and the process for submitting an application for renewal. The application form shall require that an applicant provide at least all of the following information about each secondary mortgage loan officer registrant included in the application for renewal:

(a) The name, address, and current license or registration number of the applicant.

(b) The name and home address of the secondary mortgage loan officer registrant.

(c) The current registration number of the secondary mortgage loan officer registrant.

(d) A statement as to whether the secondary mortgage loan officer registrant has had an application denied, or a license, registration, or similar authority revoked or suspended, to practice any profession or occupation in any jurisdiction, including, but not limited to, licensure or registration as a broker, lender, or servicer in which the secondary mortgage loan officer registrant held more than 25% of the ownership interest or as a secondary mortgage loan officer.

(e) Except as provided in subsection (7), proof acceptable to the commissioner that the secondary mortgage loan officer registrant has in the immediately preceding calendar year completed at least 6 hours of instruction in a course or courses relevant to the residential mortgage lending industry, the content of which has been approved by the commissioner. The 6 hours of instruction shall include at least 1.5 hours related to legal and regulatory compliance and at least 1 hour related to ethics and fraud prevention. All of the following apply to the course or courses described in this subdivision:

(i) A course may utilize a live instructor or be conducted by electronic means, including, but not limited to, the internet, digital broadcast, or satellite network. However, a course conducted by electronic means must include a method of confirming a secondary mortgage loan officer registrant's completion of the course.

(ii) The course must be provided by a person approved by the commissioner.

(f) Any other information required by the commissioner.

(4) Before a licensee or registrant submits an application for renewal of a secondary mortgage loan officer registration for a secondary mortgage loan officer registrant under subsection (2), the secondary mortgage loan officer registrant shall provide an affidavit to the licensee or registrant that discloses any criminal conviction of or plea of no contest by the secondary mortgage loan officer registrant occurring between 1 of the following, as applicable, and the date of the affidavit:

(a) If the renewal application is for the secondary mortgage loan officer registrant's first renewal of his or her secondary mortgage loan officer registration, the date of the background records check provided at the time of his or her initial registration.

(b) If the renewal application is for the secondary mortgage loan officer registrant's second or subsequent renewal of his or her secondary mortgage loan officer registration, the date of the most recent affidavit provided by the secondary mortgage loan officer registrant to the licensee or registrant under this subsection.

(5) The commissioner shall not renew the secondary mortgage loan officer registration of any secondary mortgage loan officer who has ever been convicted of, or pled no contest to, any of the following:

(a) A felony or misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities.

(b) Within the 10-year period preceding the date of the application for renewal, a felony other than a felony described in subdivision (a).

(6) If an individual included in an application for renewal under subsection (2) is not currently registered and his or her secondary mortgage loan officer registration has not been renewed for a period of more than 5 consecutive calendar years, the individual must apply for a secondary mortgage loan officer registration under section 2b as a new applicant. The applicant may include in a renewal application under subsection (2) a request to renew the secondary mortgage loan officer registration for a secondary mortgage loan officer registrant who is not currently registered if his or her secondary mortgage loan officer registration has not been renewed for a period of fewer than 5 consecutive years.

(7) An applicant under subsection (2) for renewal of the secondary mortgage loan officer registration of a secondary mortgage loan officer registrant who has a valid, similar license or registration from another state that has instructional procedures and requirements for secondary mortgage loan officers approved by the commissioner may satisfy subsection (3)(e) by submitting proof that he or she is in compliance with the instructional requirements of that state at the time of application.

History: Add. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

493.52d Conditions requiring notice.

Sec. 2d. (1) A secondary mortgage loan officer registrant shall provide written notice to the commissioner within 10 days after any of the following occur:

(a) His or her employment or agency relationship with a licensee or registrant is terminated.

(b) He or she begins employment or an agency relationship with a licensee or registrant.

(c) There is a change in the home address or any personal telephone number or personal electronic mail address he or she previously provided to the commissioner.

(d) He or she is convicted of or pleads guilty or no contest to any of the following:

(i) A misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities.

(ii) A felony.

(2) A licensee or registrant shall provide written notice to the commissioner within 20 days after hiring or engaging an individual as a secondary mortgage loan officer or terminating the employment of or agency

relationship with a secondary mortgage loan officer.

History: Add. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

493.53 Application for license or registration; form and contents.

Sec. 3. (1) An application for a license or registration under this act shall be in writing, under oath, and in the form prescribed by the commissioner.

(2) The application shall state the name, residence, and business addresses of the applicant, each member if the applicant is a partnership, association, or limited liability company, and of each officer, director, and stockholder if the applicant is a corporation.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.53a Broker, lender, or servicer; registration with commissioner; form.

Sec. 3a. The following persons shall register with the commissioner on a form prescribed by the commissioner:

(a) A broker, lender, or servicer approved as a seller or servicer by the federal national mortgage association or the federal home loan mortgage corporation.

(b) A broker, lender, or servicer approved as an issuer or servicer by the government national mortgage association.

(c) A broker, lender, or servicer that is licensed under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or a registrant under that act if the registrant is a mortgage broker, mortgage lender, or mortgage servicer approved as a seller or servicer by the federal national mortgage association or the federal home loan mortgage corporation, or a mortgage broker, mortgage lender, or mortgage servicer approved as an issuer or servicer by the government national mortgage association.

(d) A broker, lender, or servicer that is a subsidiary or affiliate of a depository financial institution or a depository financial institution holding company if the depository institution does not maintain a main office or a branch office in this state.

History: Add. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.54 Fees.

Sec. 4. (1) At the time of making an application for a license, the applicant shall pay to the commissioner a fee for investigating the applicant as provided by section 6a.

(2) At the time of making an application for license or registration and annually thereafter, the applicant shall pay an annual operating fee as provided in section 6a.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1992, Act 77, Imd. Eff. June 2, 1992;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.55 Investigation; issuance or refusal to issue license.

Sec. 5. (1) Upon the filing of an application for a license and the payment of the required fees and the filing of proof of financial responsibility as the commissioner requires, the commissioner shall investigate the

facts. If the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant for a license, and, as applicable, the applicant's shareholders, directors, officers, partners, members, and trustees command the confidence of the community and warrant the belief that the business will be operated lawfully, honestly, fairly, and efficiently as required by this act, the commissioner shall issue to the applicant a license to engage in the business of brokering, making, or servicing secondary mortgage loans under this act.

(2) For an applicant for a registration, the commissioner shall approve the application if the commissioner finds that the applicant meets any 1 of the requirements of section 3a.

(3) A license or registration issued under this section does not approve the use of, or indemnify the licensee or registrant against claims for the improper use of the business name stated in the license.

(4) The commissioner may refuse to issue a license for any reason for which the commissioner may suspend, revoke, or refuse to renew a license under section 11.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.56 License or registration; filing application or renewal; indemnification agreement; subsection (2) inapplicable after March 31, 2009; bond or letter of credit; claims filed against proof of financial responsibility; maintenance of net worth; determination; assets excluded from computation.

Sec. 6. (1) Except as otherwise provided in this section, at the time of filing an application for a license or registration or renewal of a license or registration, an applicant shall do all of the following:

(a) Provide proof of financial responsibility in the following amounts:

(i) \$25,000.00 for a license or registration to act as a broker who receives funds from a prospective borrower before the closing of the secondary mortgage loan or who acts as a lender.

(ii) \$125,000.00 for a license or registration to act as a servicer.

(iii) An additional \$20,000.00 is required from an applicant described in subparagraph (i) or (ii) for each exclusive broker through which that applicant conducts business regulated under this act. However, the aggregate of the additional amounts required from an applicant under this subdivision shall not exceed \$1,000,000.00. This subparagraph does not apply after March 31, 2009.

(b) Provide proof of financial responsibility by 1 of the following:

(i) A corporate surety bond payable to the commissioner that expires no earlier than the date the license or registration expires, executed by a corporate surety approved by the commissioner.

(ii) An irrevocable letter of credit upon which the applicant for a license or registration is the obligor that expires no earlier than the date the license or registration expires, that is issued by a depository financial institution, and the terms of which are approved by the commissioner.

(2) A licensee or registrant that conducts business regulated by this act through 1 or more exclusive brokers shall enter into an indemnification agreement, subject to the approval of the commissioner, to protect borrowers from monetary damages that may result from doing business with the exclusive brokers through which the licensee or registrant conducts business regulated by this act. The indemnification shall be provided in the amount and form required under subsection (1). This subsection does not apply after March 31, 2009.

(3) The bond or letter of credit required under subsection (1) shall be conditioned upon the licensee or registrant conducting its business as required under this act and all the rules promulgated under this act, and the payment of all money that becomes due to borrowers, secondary mortgage loan applicants, and the commissioner.

(4) The commissioner shall prioritize and pay claims against a proof of financial responsibility filed with the commissioner under this section in a manner that, in his or her discretion, best protects the public interest.

(5) Claims may only be filed against a proof of financial responsibility filed with the commissioner under this section by the commissioner and the licensee's or registrant's borrowers, secondary mortgage loan applicants, and loan servicing customers.

(6) Claims filed against a proof of financial responsibility filed with the commissioner under this section by a borrower or loan applicant shall involve only secondary mortgage loans or secondary mortgage loan applications secured or to be secured by real property used as a dwelling located in this state. The amount of the claim shall not exceed actual fees in connection with a loan application, overcharges of principal and interest, and excess escrow collections by the licensee or registrant.

(7) The commissioner may file a claim against a proof of financial responsibility filed with the

commissioner under this section for payment of fines or fees due and payable to the commissioner and reimbursement of expenses incurred in investigating the licensee or registrant and expenses incurred in distributing proceeds of the proof of financial responsibility. A claim filed under this subsection shall be paid in full prior to payment of other claims against a proof of financial responsibility, unless the commissioner, in his or her discretion, waives in whole or in part the right to priority of payment.

(8) In the event that valid claims exceed the amount of a proof of financial responsibility filed with the commissioner under this section, each claimant shall be entitled only to a pro rata amount of his or her valid claim.

(9) A licensee that acts as a broker and that receives funds from a prospective borrower before the closing of the secondary mortgage loan shall maintain a net worth of not less than \$25,000.00. A licensee that acts as a lender shall maintain a net worth of not less than \$25,000.00. A licensee that acts as a servicer shall maintain a net worth of not less than \$100,000.00.

(10) Net worth under subsection (9) is determined at the conclusion of the fiscal year of the licensee immediately preceding the date an application for a license, or renewal of a license, is submitted to the commissioner. An applicant shall disclose its net worth on a form prescribed by the commissioner or on a form prepared or reviewed by a certified public accountant and in accordance with generally accepted accounting principles. The following assets are excluded in the computation of net worth:

(a) That portion of an applicant's assets pledged to secure obligations of any person other than the applicant.

(b) An asset, except a construction loans receivable, secured by mortgages from related companies, due from officers or stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest.

(c) An amount in excess of the lower of the cost or market value of mortgage loans in foreclosure, or real property acquired through foreclosure.

(d) An investment shown on the balance sheet in joint ventures, subsidiaries, or affiliates that is greater than the market value of the assets.

(e) Good will or value placed on insurance renewals or property management contract renewals or other similar intangible value.

(f) Organization costs.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997;—Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.56a Registration or license; expiration; renewal; filing financial statement; exemption; fees; failure to submit reports or fees; disposition of money received; "MBLSLA fund" defined; limitation on fees; annual report; additional reports; false statement as felony.

Sec. 6a. (1) A registration or license, unless it is renewed, expires on December 31 of each year. A person may renew a registration or license by filing an application for license or registration renewal and paying the annual operating fee for the succeeding year. The application and payment shall be received by the commissioner on or before a date prescribed by the commissioner.

(2) Not later than 90 days after close of the fiscal year of a licensee or registrant, the licensee or registrant shall annually deliver to the commissioner a financial statement for the fiscal year prepared from the licensee's or registrant's books and records. At the licensee's or registrant's option, the financial statement may be any of the following:

(a) On a form prescribed by the commissioner.

(b) A report substantially similar to the form prescribed by the commissioner, which the licensee or registrant represents to the commissioner to be true and complete.

(c) In a format prepared and certified by an independent certified public accountant licensed by a regulatory authority of any state or political subdivision of the United States.

(3) A registrant that is a licensee or registrant under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, and that timely files with the commissioner the financial statement required under section 7 of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1657, is exempt from the filing requirement of subsection (2).

(4) At the time of making an initial application for a license under this act, and at the time of making the first application for a license after the suspension or revocation of a license, an applicant for a license shall

pay to the commissioner a fee for investigating the applicant for a license and the annual operating fee established by the commissioner under subsection (5). To renew a license or registration that has not been suspended or revoked, the applicant shall only pay to the commissioner the annual operating fee.

(5) If an initial license or registration described in subsection (4) will have an effective date of July 1 or later, the initial annual operating fee for that license is 1/2 of the annual operating fee.

(6) The commissioner shall annually establish a schedule of fees that are sufficient to pay, but not to exceed, the reasonably anticipated costs of the office of financial and insurance regulation for administering and enforcing this act. The fee schedule shall include all of the following:

(a) For the investigation of an applicant for a license, a fee of not less than \$400.00 or more than \$1,000.00.

(b) Subject to subsection (5), an annual operating fee for each licensee or registrant, based upon the number of secondary mortgage loans the licensee or registrant brokered to other parties that were closed during the previous calendar year, the number of secondary mortgage loans closed by the licensee or registrant during the previous calendar year, and the dollar volume of secondary mortgage loans serviced by the licensee or registrant as of December 31 of the previous calendar year. The annual operating fee set by the commissioner under this subsection shall be based upon information in reports filed under subsection (13).

(c) For amending or reissuing a license, registration, or secondary mortgage loan officer registration, a fee of not less than \$15.00 or more than \$200.00.

(d) A licensee or registrant shall pay the actual travel, lodging, and meal expenses incurred by employees of the office of financial and insurance regulation who travel out of state to examine or investigate the records of the licensee or registrant and the cost of independent investigators employed under section 6b(3)(e).

(e) An annual fee from or on behalf of each secondary mortgage loan officer registrant in an amount established by the commissioner. For purposes of this subdivision, the commissioner shall establish an amount for the annual fee that is sufficient to defray the estimated cost of administering and enforcing the secondary mortgage loan officer registration provisions of this act. This subdivision does not apply to a secondary mortgage loan officer registrant described in section 2a(9).

(7) Fees received under this act are not refundable.

(8) If any fees or penalties provided for in this act are not paid when required, the attorney general may maintain an action against the delinquent licensee or registrant for the recovery of the fees and penalties together with interest and costs.

(9) A licensee or registrant that fails to submit to the commissioner the reports as required by subsections (2) and (13) is subject to a penalty of \$25.00 for each day a required report is delinquent or \$1,000.00, whichever is less.

(10) A license or registration renewal fee that is not received on or before December 31 is subject to a penalty of \$25.00 for each day the fee is delinquent or \$1,000.00, whichever is less.

(11) Money received from the fees described in this section shall be deposited in the MBLSLA fund. As used in this subsection, "MBLSLA fund" means the restricted account created under section 8(8) of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1658.

(12) The annual operating fees set by the commissioner shall not exceed the levels needed to cover the estimated cost of enforcement of this act.

(13) On or before a date to be determined by the commissioner, a licensee or registrant shall annually file with the commissioner a report giving information, as required by the commissioner, concerning the business and operations of the licensee or registrant under this act during the immediately preceding calendar year. In addition, the commissioner may require a licensee or registrant to file special reports as the commissioner considers reasonably necessary for the proper supervision of licensees or registrants under this act. Reports required under this section shall be in the form prescribed by the commissioner, signed, and affirmed. A person who willfully and knowingly subscribes and affirms a false statement in a report required under this subsection is guilty of a felony, punishable by imprisonment for not more than 15 years.

History: Add. 1997, Act 91, Imd Eff. Aug. 1, 1997;—Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.56b Powers of commissioner.

Sec. 6b. (1) The commissioner shall exercise general supervision and control over brokers, lenders, and servicers doing business in this state and secondary mortgage loan officers originating secondary mortgage loans in this state.

(2) In addition to the other powers granted by this act, the commissioner may do any of the following:

(a) Deny an application for a license, registration, or secondary mortgage loan officer registration.

(b) Conduct examinations and investigations of any person, as necessary to enforce this act and the rules promulgated under this act.

(c) Investigate complaints filed against licensees or registrants.

(d) Advise the attorney general or the prosecuting attorney of a county in which a broker, lender, or servicer is conducting business or in which a secondary mortgage loan officer resides that the commissioner believes a licensee, registrant, secondary mortgage loan officer registrant, or other person is violating this act. The attorney general or prosecuting attorney shall bring a legal action to enjoin the operation of the business of the broker, lender, or servicer or the originating of secondary mortgages by the secondary mortgage loan officer or prosecute violations of this act.

(e) Bring an action in the Ingham county circuit court to enjoin a person from participating in, continuing to practice, or from engaging in a practice that is an unsafe or injurious practice or that violates this act or a rule promulgated under this act.

(f) Order a person to cease and desist from a violation of this act or a rule promulgated under this act under section 14.

(g) Suspend, revoke, or refuse to issue a license, registration, or secondary mortgage loan officer registration under section 11.

(h) Assess a civil fine under section 27.

(i) Appoint a conservator under section 12a.

(j) Issue an order to prohibit a person from being employed by, an agent of, or control person of, a licensee or registrant under section 14a.

(k) Censure a licensee, registrant, or secondary mortgage loan officer registrant.

(3) In the conduct of any examination or investigation under this act, the commissioner may do any of the following:

(a) Issue a subpoena under section 15.

(b) Administer oaths under section 15.

(c) Interrogate a person under oath concerning the business and conduct of affairs of a person subject to this act, and require the production of books, records, or papers relative to the inquiry.

(d) Have free access during regular business hours to the offices, places of business, or other location where the licensee, registrant, or an affiliate of a licensee or registrant, maintains business-related documents, and to the books, accounts, papers, records, files, documents, safes, and vaults of a licensee or registrant. The information obtained during the examination or investigation is exempt from the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be available for public inspection or copying or divulged to any person except as follows:

(i) To the attorney general.

(ii) To a regulatory agency.

(iii) In connection with an enforcement action brought under this or another applicable act.

(iv) To law enforcement officials.

(v) To persons authorized by the Ingham county circuit court to receive the information.

(e) Employ independent investigators to conduct a part or all of an investigation, in the case of an investigation other than an examination.

History: Add. 1997, Act 91, Imd. Eff. Aug. 1, 1997;—Am. 2002, Act 392, Imd. Eff. May 30, 2002;—Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.57 Repealed. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: The repealed section pertained to duties of commissioner upon refusal to issue license.

Popular name: Secondary Mortgage Loan Act

493.58 Summary suspension of license or registration; order; affidavit; service; filing request for hearing; duration of license suspension; record.

Sec. 8. (1) The commissioner may issue an order summarily suspending a license or registration under section 92 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292, supported by an affidavit that an imminent threat of financial loss or imminent threat to the public welfare exists. The order to summarily suspend a license or registration shall be served upon the licensee or registrant.

(2) A licensee or registrant upon which an order to summarily suspend its license or registration has been served shall have 20 days after the date of service of the order within which to file with the commissioner a request for a hearing.

(3) A hearing shall be promptly held upon receipt of a request for a hearing filed by a licensee or registrant.

(4) A summary suspension of a license or registration shall continue until the commissioner finds that the imminent threat of financial loss and imminent threat to the public welfare no longer exist.

(5) The record created at the hearing of the summary suspension shall become part of the record on the complaint at a subsequent hearing in a contested case.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1992, Act 77, Imd. Eff. June 2, 1992;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.59 Order in addition to other legal actions.

Sec. 9. A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license or registration shall be in addition to an informal conference, criminal prosecution, or proceeding to deny, revoke, or suspend a license or registration, or any other legal action.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.60 Complaint; forwarding to licensee or registrant; response; investigation or administrative action.

Sec. 10. (1) Any person may file a complaint with the commissioner alleging that a licensee or registrant has violated this act or a rule promulgated or an order issued under this act.

(2) The commissioner may forward the complaint to the licensee or registrant against which the complaint is filed.

(3) The commissioner shall request that the licensee or registrant respond to the complainant and provide the commissioner with a copy of the response within a specified period. If the licensee or registrant fails to respond to the complainant within the specified period, or fails to handle the complaint to the satisfaction of the commissioner, the commissioner may commence an investigation or administrative action against the licensee or registrant.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.61 Suspension, revocation, or refusal to renew license, registration, or secondary

mortgage loan officer registration; notice; hearing; findings; facts or conditions; surrender of license or registration; preexisting contract not affected; lost or destroyed license, registration, or secondary mortgage loan officer registration certificate.

Sec. 11. (1) A notice shall be given to a licensee, registrant, secondary mortgage loan officer registrant, or applicant of the commissioner's intention to enter an order to suspend or revoke a license, registration, or secondary mortgage loan officer registration or to refuse to issue a license, registration, or secondary mortgage loan officer registration. The notice shall be in writing and served personally or sent by certified mail to the licensee, registrant, secondary mortgage loan officer registrant, or applicant.

(2) A licensee, registrant, secondary mortgage loan officer registrant, or applicant may request a hearing to contest the intention to enter an order or refusal under subsection (1) within 20 days after service of the notice. If a hearing regarding suspension, revocation, or refusal to issue a license, registration, or secondary mortgage loan officer registration is not requested, the commissioner shall enter a final order regarding the suspension, revocation, or refusal to issue a license, registration, or secondary mortgage loan officer registration. The hearing shall be conducted in accordance with the provisions of the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The commissioner may suspend, revoke, or refuse to issue or renew a license, registration, or secondary mortgage loan officer registration if he or she finds that the licensee, registrant, or secondary mortgage loan officer registrant or an owner, director, officer, member, partner, stockholder, employee, or agent of a licensee, registrant, or secondary mortgage loan officer registrant has done any of the following:

(a) Made a material misstatement in an application.

(b) Engaged in fraud, deceit, or material misrepresentation in connection with any transaction subject to this act.

(c) Failed after 10 days' written notice of default, to pay an annual operating fee, to maintain in effect a bond as required by the commissioner, or to comply with a demand, ruling, or requirement of the commissioner lawfully made under this act.

(d) Either knowingly or without the exercise of due care to prevent it, violated this act or a rule promulgated under this act.

(3) The commissioner may suspend, revoke, or refuse to renew a license, registration, or secondary mortgage loan officer registration upon a finding of a fact or condition which, if the fact or condition had existed at the time of the original application for the license, registration, or secondary mortgage loan officer registration, clearly would have warranted the commissioner to refuse to issue the license, registration, or secondary mortgage loan officer registration originally.

(4) A licensee, registrant, or secondary mortgage loan officer registrant may surrender a license, registration, or secondary mortgage loan officer registration by delivering to the commissioner the license, registration, or secondary mortgage loan officer registration with written notice that the licensee, registrant, or secondary mortgage loan officer registrant surrenders the license, registration, or secondary mortgage loan officer registration. The surrender, suspension, or revocation of a license, registration, or secondary mortgage loan officer registration under this act shall not affect the licensee's, registrant's, or secondary mortgage loan officer registrant's civil or criminal liability for acts committed in violation of this act. The surrender of a license, registration, or secondary mortgage loan officer registration does not affect a proceeding to suspend or revoke a license, registration, or secondary mortgage loan officer registration.

(5) Except as otherwise provided by law, a surrender, suspension, or revocation of a license, registration, or secondary mortgage loan officer registration does not impair or affect the obligation of a preexisting contract between the licensee, registrant, or secondary mortgage loan officer registrant and another person.

(6) A licensee, registrant, or secondary mortgage loan officer registrant whose license, registration, or secondary mortgage loan officer registration certificate has been destroyed or lost may comply with this section by submitting to the commissioner a notarized affidavit of the loss accompanied by written notice that the licensee, registrant, or secondary mortgage loan officer registrant surrenders the license, registration, or secondary mortgage loan officer registration.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997;—Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.62 Contracts or commitments made prior to suspension or revocation.

Sec. 12. (1) This act does not prevent a person whose license or registration has been suspended or revoked

from continuing to service secondary mortgage loans under servicing contracts in existence at the time of the suspension for a period not to exceed 6 months after the date of the entry of the final decision in the contested case suspending or revoking the license or registration.

(2) In the event of a summary suspension or revocation, the commissioner shall have discretion to order the licensee or registrant to cease all activities including the servicing of secondary mortgage loans and the closing of secondary mortgage loans under any commitments to make secondary mortgage loans issued by a person prior to the suspension or revocation.

(3) For an administrative action other than a summary suspension or revocation, this act does not prevent a person whose license or registration has been suspended or revoked from making a secondary mortgage loan under a commitment to make a secondary mortgage loan issued by the person prior to the suspension or revocation. A person who received a commitment issued by a person whose license or registration has been suspended or revoked may, prior to closing the loan, terminate the commitment and receive a refund of all money paid to the person.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.62a Conservator; appointment; reimbursement of expenses; powers; termination; disposition of compensation and expenses; disbursement of funds and interest.

Sec. 12a. (1) Notwithstanding section 12, if the commissioner determines that a licensee or registrant is, intentionally or as a result of gross or wanton negligence, not servicing secondary mortgage loans as required by this act or the terms of the servicing contracts, the commissioner may appoint a conservator for the licensee or registrant and require the conservator to provide a bond or security as the commissioner considers necessary. The commissioner may appoint as conservator 1 of the employees of the financial institutions bureau or some other competent and disinterested person. The financial institutions bureau shall be reimbursed out of the assets of the conservatorship for actual expenses incurred in connection with the conservatorship. The amount reimbursed shall be paid into the revolving fund provided for in subsection (4). The expenses shall be a first charge upon the assets of the licensee or registrant and shall be fully paid before any final distribution or payment of dividends is made to creditors or shareholders.

(2) The conservator, under the direction of the commissioner, shall take sole control of all the affairs of the licensee or registrant and the possession of the books and records of the licensee or registrant. The licensee or registrant may transfer or assign the rights to service secondary mortgage loans to a person approved by the commissioner. The conservator of the licensee or registrant shall take such action as may be necessary to assure that the secondary mortgage loans are serviced as required by this act and the servicing contracts.

(3) If the commissioner is satisfied that termination of the conservatorship may be done safely and is in the public interest, the commissioner may terminate the conservatorship and permit the licensee or registrant to resume the servicing of secondary mortgage loans subject to any terms, conditions, and limitations as prescribed by the commissioner.

(4) All compensation and expenses required to be reimbursed to the financial institutions bureau in connection with a conservatorship and all expenses for state supervision of conservatorship under this act shall be deposited in the state treasury and shall be directed to a financial institutions bureau revolving fund. Money in the fund and any interest earned shall only be disbursed on proper vouchers, approved by the commissioner, to reimburse the financial institutions bureau for expenses incurred by the bureau in connection with conservatorships of licensees or registrants.

History: Add. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Constitutionality: In *Wachovia Bank v Watters*, 431 F 2d 556 (2005), the 6th circuit court of appeals held that the national bank act and implementing federal regulations preempt conflicting Michigan law as to provisions requiring registration before a mortgage lender may conduct business in Michigan, payment of registration and renewal fees, submission of financial statements, and certain investigatory and regulatory powers of the insurance commissioner. (United States Supreme Court granted certiorari June 1, 2006.)

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.63 Duration of license, registration, or secondary mortgage loan officer registration; reinstatement of suspended license or registration; issuing new license or registration; consent required for transfer or assignment; requirements for transfer.

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Sec. 13. (1) A license, registration, or secondary mortgage loan officer registration remains in force until the date of expiration or until surrendered, revoked, or suspended under this act. The commissioner may reinstate a suspended license, registration, or secondary mortgage loan officer registration or issue a new license, registration, or secondary mortgage loan officer registration to a licensee, registrant, or secondary mortgage loan officer registrant whose license, registration, or secondary mortgage loan officer registration has been revoked if the conditions under which the license, registration, or secondary mortgage loan officer registration was revoked have been corrected and the commissioner is satisfied, as the result of an investigation, that the conditions are not likely to recur.

(2) A person shall not transfer or assign a license or registration without the consent of the commissioner. The sale, transfer, assignment, or conveyance of more than 25% of the outstanding voting stock of a licensee or registrant that is a corporation, or more than 25% of the interest in a licensee or registrant that is a limited liability company or partnership or other unincorporated legal entity is considered a transfer of a license or registration for purposes of this subsection.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997;—Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

Compiler's note: In the second sentence of subsection (1), the phrase “under which the license or registrant was revoked” evidently should read “under which the license or registration was revoked.”

For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.64 Order to cease and desist; issuance; conditions; notice; hearing; failure to appear as consent; service or order; effective date and enforcement.

Sec. 14. (1) If in the opinion of the commissioner a licensee or registrant is, has, or is about to engage in a practice that poses a threat of financial loss or threat to the public welfare, or is, has, or is about to violate a law or rule, the commissioner may serve a notice as provided in subsection (2).

(2) A notice served under this section shall contain a statement of the facts constituting the alleged practice or violation, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should be issued against the licensee or registrant. The hearing shall be held not earlier than 30 days nor later than 60 days after service of the notice unless another date is set by the commissioner at the request of the licensee or registrant.

(3) If the licensee or registrant fails to appear at the hearing by a duly authorized representative, the licensee or registrant shall have consented to the issuance of the cease and desist order.

(4) In the event of consent under subsection (3), or if upon the record made at the hearing, the commissioner finds that the practice or violation specified in the notice has been established, the commissioner may serve upon the licensee or registrant an order to cease and desist from the practice or violation. The order may require the licensee or registrant and its directors, officers, members, partners, trustees, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(5) If the commissioner issues a cease and desist order in conjunction with a summary suspension order, the cease and desist order shall become effective on the date of service.

(6) A cease and desist order issued upon consent shall become effective at the time specified in the order and remain effective and enforceable as provided in the order.

(7) Except as provided in subsections (5) and (6) and to the extent it is stayed, modified, terminated, or set aside by the commissioner or a court, a cease and desist order shall become effective at the expiration of 30 days after the service of the order upon the licensee or registrant.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1988, Act 444, Imd. Eff. Dec. 27, 1988;—Am. 1992, Act 77, Imd. Eff. June 2, 1992;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.64a Fraud.

Sec. 14a. (1) If in the opinion of the commissioner a person has engaged in fraud, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or control person of a licensee or registrant under this act or a licensee or registrant under a financial licensing act. For purposes of this section, “fraud” shall include actionable fraud, actual or constructive fraud,

criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a hearing to be held not more than 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act.

(4) An order issued under subsection (2) or (3) is effective upon service upon the person. The commissioner shall also serve a copy of the order upon the licensee or registrant of which the person is an employee, agent, or control person. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to applicants for secondary mortgage loans, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or control person of any licensee or registrant. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect pending the completion of a review as provided under this section and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the hearing required under subsection (2) to review the suspension shall be held not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a felony involving fraud, dishonesty, or breach of trust, the commissioner may issue an order suspending or prohibiting that person from being a licensee or registrant and from being employed by, an agent of, or control person of any licensee or registrant under this act or a licensee or registrant under a financial licensing act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

(9) The commissioner shall mail a copy of any notice or order issued under this section to the licensee or registrant of which the person subject to the notice or order is an employee, agent, or control person.

History: Add. 2002, Act 392, Imd. Eff. May 30, 2002.

Popular name: Secondary Mortgage Loan Act

493.64b Hearing; final decision; judicial review; stay of commissioner's order.

Sec. 14b. (1) A hearing under section 14 or 14a shall be conducted under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Within 30 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render a decision that shall include findings of fact supporting the decision and serve upon each party to the proceeding a copy of the decision and an order consistent with the decision.

(2) Except for a consent order, a party to the proceeding, or a person affected by an order issued under section 14 or 14a may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

(3) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (2) does not stay the commissioner's order.

History: Add. 2002, Act 392, Imd. Eff. May 30, 2002.

Popular name: Secondary Mortgage Loan Act

493.64c Enforcement of order; jurisdiction.

Sec. 14c. The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under section 8, 14, or 14a.

History: Add. 2002, Act 392, Imd. Eff. May 30, 2002.

Popular name: Secondary Mortgage Loan Act

493.64d Violation as misdemeanor; penalty.

Sec. 14d. Any current or former executive officer, director, agent, or control person who violates a final order issued under section 14a is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

History: Add. 2002, Act 392, Imd. Eff. May 30, 2002.

Popular name: Secondary Mortgage Loan Act

493.64e Violation of order; exceptions.

Sec. 14e. A control person who is subject to an order issued under section 14a and who meets all of the following requirements is not in violation of the order:

(a) The control person shall not in any manner, directly or indirectly, participate in the control of a licensee or registrant after the date the order is issued.

(b) The control person shall within 6 months after the date the order is final transfer any interest the control person owns in a licensee or registrant to an unrelated third party.

History: Add. 2002, Act 392, Imd. Eff. May 30, 2002.

Popular name: Secondary Mortgage Loan Act

493.65 Subpoena of witnesses and evidence; oaths and affirmations; certain conduct as misdemeanor.

Sec. 15. (1) The commissioner may subpoena witnesses and documents, papers, books, records, and other evidence, in any matter over which the commissioner has jurisdiction, control, or supervision. The commissioner may administer oaths and affirmations to a person whose testimony is required.

(2) A person subpoenaed under this section who willfully refuses or neglects to appear at the time and place named in the subpoena, or to produce books, accounts, records, files, or documents required by the commissioner, or who refuses to be sworn or, unless permitted by law, refuses to answer as a witness, is guilty of a misdemeanor.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.66 Failure to testify or comply with subpoena; court order; contempt.

Sec. 16. If a person fails to comply with a subpoena issued by the commissioner or to testify with respect to any matter concerning which the person may be lawfully questioned, the circuit court for Ingham county, on application of the commissioner, may issue an order requiring the attendance of the person and the giving of testimony or production of evidence. The court may punish by contempt a person who fails to obey the court's order.

History: 1981, Act 125, Imd. Eff. July 23, 1981.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.67 Maintaining records relating to conduct of business; availability; statement of borrower's account; ledger history; obligation of servicer; fee prohibited.

Sec. 17. (1) A licensee or registrant shall maintain books, accounts, records, and documents of the business, as prescribed by the commissioner to enable the commissioner to determine whether the business of the licensee or registrant is conducted as required by this act and the rules promulgated under this act.

(2) The preservation of records by reproduction under the records media act, 1992 PA 116, MCL 24.401 to 24.403, constitutes compliance with this section.

(3) If the books, accounts, records, and documents are not made available in this state, the licensee or registrant shall pay the reasonable travel, lodging, and meal expenses of the examiner as provided in section 6a(6)(d).

(4) If a licensee or registrant that is a servicer, in connection with a secondary mortgage loan, requires a mortgage escrow account, the licensee or registrant shall deliver to the borrower annually a statement of the borrower's account showing the unpaid principal balance of the secondary mortgage loan at the end of the immediately preceding 12-month period, the interest paid during the period, and the amount deposited into escrow and disbursed from escrow during the period.

(5) Within 25 days after receipt of a written request from the borrower, a servicer shall deliver to the borrower a ledger history of the borrower's account showing the date and amount of all payments made or credited to the account for the immediately preceding 12-month period, and the total unpaid balance.

(6) A servicer is not obligated to furnish to the borrower more than 1 annual statement and 1 ledger history upon written request of the borrower in a 12-month period.

(7) A fee shall not be charged the borrower under subsection (4) for the annual statement or for 1 ledger history furnished to the borrower in a 12-month period.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.68 Documents; preservation; other books, accounts, records, and documents.

Sec. 18. (1) A licensee or registrant shall preserve and keep available for examination by the commissioner each secondary mortgage loan document in its possession or control, including the application, credit report, employment verification, loan disclosure statement, and settlement statement, until the secondary mortgage loan is transferred or assigned, or the expiration of 2 years after the date the secondary mortgage loan is closed, whichever occurs first.

(2) If the secondary mortgage loan is transferred or assigned, the licensee or registrant shall preserve and keep available for examination by the commissioner copies of the promissory note, mortgage, truth-in-lending disclosure statement, and settlement statement in its possession or control for 2 years after the date the secondary mortgage loan is transferred or assigned.

(3) Notwithstanding any other provision of this act, each licensee or registrant shall preserve and keep available for examination by the commissioner all documents pertaining to a rejected application for a secondary mortgage loan for the period of time required by state or federal law.

(4) A licensee or registrant shall preserve all other books, accounts, records, and documents pertaining to the licensee's or registrant's business and keep them available for examination by the commissioner for not less than 2 years after the conclusion of the fiscal year of the licensee or registrant in which the book, account, record, or document was created.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.69 Repealed. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: The repealed section pertained to rules prescribing minimum information required to be shown in books, accounts, and records.

Popular name: Secondary Mortgage Loan Act

493.70 Making or offering to make secondary mortgage loan; terms and conditions.

Sec. 20. A licensee, registrant, or secondary mortgage loan officer registrant shall not make or offer to make a secondary mortgage loan except on the terms and conditions authorized by this act and the rules promulgated under this act.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997;—Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.71 Interest rate; limitation; computation; prepaid finance charge or fee.

Sec. 21. (1) A licensee or registrant may charge, contract for, receive, or collect on a secondary mortgage loan an interest rate not exceeding the interest rate permitted by the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864. Interest on a secondary mortgage loan under this act shall not be added or deducted in advance but shall be computed on the basis of the actual unpaid balance of the principal of the loan on a daily or monthly basis for the time actually outstanding until the loan is paid in full.

(2) This section does not prohibit a lender from offering the borrower, in connection with a secondary

mortgage loan that involves other than open-end credit, an option to pay a prepaid finance charge in exchange for a lower contract interest rate or to charge a prepayment fee in the amount permitted under section 1c of 1966 PA 326, MCL 438.31c.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1982, Act 361, Imd. Eff. Dec. 23, 1982;—Am. 1983, Act 43, Imd. Eff. May 12, 1983;—Am. 1983, Act 251, Imd. Eff. Dec. 29, 1983;—Am. 1984, Act 416, Imd. Eff. Dec. 28, 1984;—Am. 1985, Act 155, Imd. Eff. Nov. 15, 1985;—Am. 1995, Act 164, Eff. Mar. 28, 1996;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.72 Charges and fees includable in principal; interest authorized by law; sale of insurance; hazard insurance; charges permitted by federal lending program.

Sec. 22. (1) A licensee or registrant shall not directly or indirectly assess any charges or fees in connection with making a secondary mortgage loan, except for any of the following, which may be included in the principal of the loan:

(a) Charges for credit life insurance or credit accident and health insurance as defined in section 3 of the credit insurance act, 1958 PA 173, MCL 550.603, or any other insurance under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, that is offered by the licensee or registrant and that the borrower has the option to purchase.

(b) If reasonable and necessary, the actual expenses incurred in connection with making, closing, disbursing, extending, readjusting, or renewing a secondary mortgage loan by any of the following, as applicable:

(i) The licensee.

(ii) The registrant.

(iii) An exclusive broker of the licensee or registrant. This subparagraph does not apply after March 31, 2009.

(c) A nonrefundable processing fee that is not more than 5% of the gross amount of the loan.

(d) Other charges authorized under the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(e) A reasonable annual fee for the privilege of receiving open-end credit from the licensee or registrant.

(2) The charges authorized under this section are in addition to interest authorized by law and are not a part of the interest collected or agreed to be paid on the secondary mortgage loan within the meaning of the law of this state that limits the rate of interest that may be exacted in a transaction. The charges shall be paid only once by the borrower to the licensee or registrant.

(3) Any insurance sold by a licensee or registrant in connection with a secondary mortgage loan must comply with the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, or the credit insurance act, 1958 PA 173 MCL 500.601 to 500.624, as applicable.

(4) If a licensee or registrant requires a borrower to purchase hazard insurance, the licensee or registrant shall not require the borrower to purchase the insurance through a particular agency or agent or from a particular insurer.

(5) This section does not prohibit a licensee or registrant from imposing the charges that are permitted by any federal lending program designed to promote the making of secondary mortgage loans.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1994, Act 141, Imd. Eff. May 27, 1994;—Am. 1994, Act 408, Eff. Mar. 30, 1995;—Am. 1995, Act 164, Eff. Mar. 28, 1996;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997;—Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.73 Instrument evidencing or securing secondary mortgage; contents.

Sec. 23. An instrument evidencing or securing a secondary mortgage loan shall not contain any of the following:

(a) A power of attorney to confess judgment.

(b) A provision by which the debtor waives rights accruing under this act, any federal law, or law of this state.

(c) An assignment of or order for the payment of all or part of salary, wages, commissions, or other compensation for services earned or to be earned.

(d) A provision to compel, encourage, or induce a borrower to incorporate to evade the provisions of this

act.

(e) A provision by which a debtor agrees to pay damages absent a judgment by a court.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

Administrative rules: R 493.101 et seq. of the Michigan Administrative Code.

493.74 Licensee or registrant; prohibited conduct.

Sec. 24. (1) A licensee or registrant shall not transfer or assign a secondary mortgage loan or a security directly representing an interest in 1 or more secondary mortgage loans before the disbursement of 75% or more of the proceeds of the secondary mortgage loan to, or for the benefit of, the borrower. This subsection shall not apply to any of the following:

(a) A land contract not considered to be an equitable secondary mortgage.

(b) A loan made under a state or federal government program that allows the lender to escrow more than 25% of the proceeds for a limited period of time.

(c) A construction loan.

(d) A secondary mortgage loan that provides in writing that the loan proceeds shall be disbursed to or for the benefit of the borrower in installments or upon the request of the borrower or upon the completion of renovations or repairs to the dwelling situated on the real property subject to the secondary mortgage loan.

(2) It is a violation of this act for a licensee or registrant to do any of the following:

(a) Suppress or withhold from the commissioner any information that the licensee or registrant possesses that would make the licensee or registrant ineligible for licensing or registration under this act or would warrant the commissioner's denial of a license or registration application.

(b) Violate any provisions of 1966 PA 125, MCL 565.161 to 565.164, regulating the handling of mortgage escrow accounts by mortgagees.

(c) Until proper disbursement is made, fail to place in a trust or escrow account held by a depository financial institution in a manner approved by the commissioner any money, funds, deposits, checks, drafts, or other negotiable instruments received by a broker, lender, or servicer that is the portion of a payment on a secondary mortgage loan that the person is obligated to pay to a third party. The deposits shall include amounts paid to the holder of the secondary mortgage loan, amounts for property taxes and insurance premiums, and amounts paid under an agreement that requires, if the secondary mortgage loan is not closed, the amounts paid shall be refunded to the prospective borrower, or if the secondary mortgage loan is closed, the amounts paid shall be applied to fees and costs incurred at the time the secondary mortgage loan is closed. Fees and costs include, but are not limited to, title insurance premiums and recording fees. Fees and costs do not include amounts paid to cover costs incurred to process the secondary mortgage loan application, to obtain an appraisal, or to receive a credit report.

(d) Refuse to permit an examination or investigation by the commissioner of the books and affairs of the licensee or registrant, or refuse or fail, within a reasonable time, to furnish any information or make a report that may be required by the commissioner under this act.

(e) Be convicted of a felony, or any misdemeanor of which an essential element is fraud.

(f) Refuse or fail to pay within a reasonable time expenses assessed under this act.

(g) Fail to make restitution after having been ordered to do so by the commissioner or an administrative agency, or fail to make restitution or pay damages to persons injured by the licensee's or registrant's business transactions after having been ordered to do so by a court.

(h) Fail to make a secondary mortgage loan pursuant to, and in accordance with, a written commitment to make a secondary mortgage loan issued to, and accepted by, a person when the person has timely and completely satisfied all the conditions of the commitment prior to the expiration of the commitment.

(i) Require a prospective borrower to deal exclusively with the licensee or registrant in regard to a secondary mortgage loan application.

(j) Take a security interest in real property before closing the secondary mortgage loan to secure payment of fees assessed in connection with a secondary mortgage loan application.

(k) Except as otherwise provided under section 14e, knowingly permit a person to violate an order that has been issued under this act or any other financial licensing act that prohibits that person from being employed by, an agent of, or a control person of the licensee or registrant.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997;—Am. 2002, Act 392, Imd. Eff. May 30, 2002.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.75 Violation of consumer credit protection act as violation of act.

Sec. 25. A violation of the consumer credit protection act, Public Law 90-321, 82 Stat. 146, as amended by title VI of Public Law 96-221, 94 Stat. 168 or other applicable federal law is a violation of this act.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.76 Advertising; prohibited conduct.

Sec. 26. (1) A licensee or registrant shall not, willfully or knowingly, make a false, misleading, or deceptive advertisement regarding secondary mortgage loans or the availability of secondary mortgage loans.

(2) A licensee or registrant shall not advertise any size of loan, security required for a loan, rate of charge, or other condition of lending except with the intent of making loans at those or lower rates, and under the stated conditions, to secondary mortgage loan applicants who meet the standards or qualifications prescribed by the licensee or registrant.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1992, Act 77, Imd. Eff. June 2, 1992;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Popular name: Secondary Mortgage Loan Act

493.76a Secondary mortgage loan officer registrant; prohibited conduct.

Sec. 26a. A secondary mortgage loan officer registrant shall not do any of the following:

(a) Engage in fraud, deceit, or material misrepresentation in connection with any transaction governed by this act.

(b) Intentionally, or due to gross or wanton negligence, repeatedly fail to provide borrowers with any material disclosures of information required by law.

(c) Directly or indirectly make a false, misleading, or deceptive advertisement regarding secondary mortgage loans or the availability of secondary mortgage loans.

(d) Suppress or withhold from the commissioner any information that the secondary mortgage loan officer possesses and that, if submitted, would have made the secondary mortgage loan officer ineligible for registration or renewal of his or her secondary mortgage loan officer registration under this act at the time of application and would have allowed the commissioner to refuse to register the secondary mortgage loan officer.

(e) Be convicted of, or plead no contest to, any of the following:

(i) A misdemeanor involving embezzlement, forgery, fraud, a financial transaction, or securities.

(ii) A felony.

(f) Refuse or fail to furnish any information or make any report required by the commissioner to issue or renew a secondary mortgage loan officer registration, or otherwise required by the commissioner, within a reasonable period of time, as determined by the commissioner, after requested by the commissioner.

History: Add. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

493.77 Violation of act; making secondary mortgage loans without license as misdemeanor; penalty; civil fine; actions.

Sec. 27. (1) In addition to the penalties provided by this act, a violation of this act with respect to a particular secondary mortgage loan transaction is also subject to the penalty and remedy provisions of the credit reform act, 1995 PA 162, MCL 445.1851 to 445.1864.

(2) A person, association, nonprofit corporation, common law trust, joint stock company, limited liability company, or any other group of individuals, however organized, or any owner, partner, member, officer, director, trustee, employee, agent, broker, or representative thereof who or which willfully or intentionally does any of the following is guilty of a misdemeanor punishable by a fine of not more than \$15,000.00, imprisonment for not more than 1 year, or both:

(a) Engages in this state in the business of a broker, lender, or servicer without a license or registration required under this act.

(b) Acts as a secondary mortgage loan officer in this state without a secondary mortgage loan officer

registration required under this act.

(c) Coerces or induces a real estate appraiser to inflate the value of real property used as collateral for a secondary mortgage loan, including, but not limited to, by doing any of the following:

(i) Representing or implying that a real estate appraiser will not be selected to conduct an appraisal of the real property or selected for future appraisal work unless the appraiser agrees in advance to a value, range of values, or minimum value for the real property.

(ii) Representing or implying that a real estate appraiser will not be paid for an appraisal unless the appraiser agrees in advance to a value, range of values, or minimum value for the real property.

(3) A person who violates this act or directly or indirectly counsels, aids, or abets in a violation is liable, in addition to other penalties and forfeitures imposed by this act, for a civil fine of not more than \$3,000.00 for each violation, except that a person shall not be fined more than \$30,000.00 for a transaction resulting in more than 1 violation, plus the costs of investigation. The civil fine shall be sued for and recovered by the commissioner and shall be collected and enforced by summary proceedings by the attorney general.

(4) Whether or not he or she seeks damages or has an adequate remedy at law, a person, a county prosecutor, or the attorney general may bring an action to do any of the following:

(a) Obtain a declaratory judgment that a method, act, or practice is a violation of this act.

(b) Enjoin a person from engaging in, or who is about to engage in, a method, act, or practice that violates this act.

(c) Recover actual damages resulting from a violation of this act or \$250.00, whichever is greater, together with reasonable attorneys' fees and the costs of bringing the action.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1992, Act 77, Imd. Eff. June 2, 1992;—Am. 1995, Act 164, Eff. Mar. 28, 1996;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997;—Am. 2008, Act 325, Imd. Eff. Dec. 18, 2008.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.78 Rules.

Sec. 28. The commissioner shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to administer and enforce this act.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

Administrative rules: R 493.101 et seq. of the Michigan Administrative Code.

493.79 Construction of act; applicability.

Sec. 29. This act does not apply to a depository financial institution that is subject to other laws of this state, another state, or of the United States regulating the power of the depository financial institution to engage in secondary mortgage loan transactions or upon the conditions and limitations imposed by law upon the exercise of this power. This act does not apply to an affiliate or subsidiary of a depository financial institution or a depository financial institution holding company if the depository institution maintains an office or branch office in this state.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.79a Applicability of act to nonprofit corporation.

Sec. 29a. (1) This act does not apply to a nonprofit corporation that makes, brokers, or services mortgage loans in connection with a neighborhood housing program assisted under the neighborhood reinvestment corporation act, title VI of Public Law 95-557, 42 U.S.C. 8101 to 8107.

(2) This act does not apply to a nonprofit corporation that makes or services secondary mortgage loans only in connection with mortgages made under a program described in section 25a(1)(b) and (c) of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1675a, if the commissioner has determined that the nonprofit corporation is exempt from that act under section 25a of the mortgage

brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1675a.

History: Add. 1994, Act 261, Imd. Eff. July 5, 1994;—Am. 1998, Act 372, Imd. Eff. Oct. 20, 1998.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.80 Persons permitted to make secondary mortgage loans.

Sec. 30. (1) Except as otherwise provided by this act, a secondary mortgage loan may be made in compliance with this act, and only in conformance with the interest rate limitations of 1966 PA 326, MCL 438.31 to 438.33, by either of the following:

(a) A salesperson acting as an agent for a residential builder, or a residential builder, licensed under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412, when made or negotiated in connection with the sale of a residential structure constructed by that builder.

(b) A real estate broker or real estate salesperson licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518, and engaged in the sale of real estate as a principal vocation, when made or negotiated in connection with a real estate sale where the real estate broker or salesperson affiliated with the broker represents either the buyer or seller.

(2) Except as otherwise provided by this act, a secondary mortgage loan may be made in compliance with this act by a person to an employee of that person provided that the proceeds of the loan are used to assist the employee in meeting his or her housing needs.

History: 1981, Act 125, Imd. Eff. July 23, 1981;—Am. 1984, Act 124, Imd. Eff. June 1, 1984;—Am. 1997, Act 91, Imd. Eff. Aug. 1, 1997.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

493.81 Powers and duties of attorney general.

Sec. 31. The powers and duties of the attorney general provided in this act are in addition to his existing powers and duties provided by statutes and common law, and nothing in this act shall impair or restrict the jurisdiction of any court in any action or proceeding by the attorney general under any other statute or common law.

History: 1981, Act 125, Imd. Eff. July 23, 1981.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Popular name: Secondary Mortgage Loan Act

CREDIT CARD ARRANGEMENTS

Act 379 of 1984

AN ACT to define and regulate certain credit card transactions, agreements, charges, and disclosures; to prescribe the powers and duties of the financial institutions bureau and certain state agencies; to provide for the promulgation of rules; and to provide for fines and penalties.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

The People of the State of Michigan enact:

493.101 Definitions.

Sec. 1. As used in this act:

(a) "Commissioner" means the commissioner of the financial institutions bureau of the department of commerce and authorized representatives of the commissioner.

(b) "Licensee" means a person licensed under this act.

(c) "Person" means an individual, corporation, partnership, association, or other legal entity.

(d) "Credit card arrangement" means an unsecured loan or unsecured extension of credit made to the holder of a credit card or charge card which loan or extension of credit is accessed in connection with a credit card or charge card authorized by this act.

(e) "Credit card" or "charge card" means any card or device issued by a licensee under a credit card arrangement which arrangement gives to a cardholder the privilege of obtaining credit from the card issuer or any other person in purchasing or leasing property or services, obtaining credit or loans, or otherwise.

(f) "Truth in lending act" means title I of the consumer credit protection act, Public Law 90-321, 15 U.S.C. 1601 to 1667e.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.102 Credit card arrangement; license required; terms and conditions.

Sec. 2. (1) Except for a person licensed under the consumer financial services act, a person shall not make or negotiate, or offer to make or negotiate, a credit card arrangement unless that person is licensed as provided in this act.

(2) A licensee shall not make or offer to make a credit card arrangement except on the terms and conditions authorized by this act and the rules promulgated under this act.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984;—Am. 1988, Act 165, Eff. Sept. 1, 1988.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.103 Application for license; oath; form; contents; fees; net worth requirements; rules.

Sec. 3. (1) An application for a license under this act shall be in writing, under oath, and in the form prescribed by the commissioner.

(2) The application shall state the name, residence, and business addresses of the applicant; if the applicant is a partnership or association, of each member; and if a corporation, of each officer, director, and stockholder. The commissioner may exempt publicly held corporations from the requirement to provide information regarding stockholders. The application shall include other information the commissioner requires.

(3) At the time of making an application, the applicant shall pay to the commissioner an investigation fee and, at the time of application and annually thereafter, an annual license fee as provided in section 7.

(4) Each application for a license shall be accompanied by financial statements, reasonably satisfactory to the commissioner, showing that the applicant's net worth exceeds \$1,000,000.00. A licensee shall continue to maintain the stated net worth requirement while engaging in credit card arrangements and the commissioner may subsequently adopt rules establishing a higher net worth requirement to assure safe, sound operation of credit card arrangements authorized by this act.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984;—Am. 1992, Act 75, Imd. Eff. June 2, 1992.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.104 Investigation; finding; issuance of license; refusal to issue license; expiration of license.

Sec. 4. (1) Upon the filing of an application and the payment of the required fees, the commissioner shall investigate the facts. If the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the applicant's members if the applicant is a partnership or association, and of the applicant's officers and directors if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business shall be operated lawfully, honestly, fairly, and efficiently within the purposes of this act, the commissioner shall issue and deliver to the applicant a license to engage in credit card arrangements.

(2) The commissioner may refuse to issue a license for any reason for which the commissioner may suspend, revoke, or refuse to renew a license under section 6.

(3) A license expires on December 31 each year.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.105 Duties of commissioner upon refusal to issue license.

Sec. 5. If the commissioner refuses to issue a license, the commissioner shall:

(a) Notify the applicant of the denial and of the applicant's right to request a hearing within 10 days.

(b) If the applicant does not request a hearing, return the sum paid as a license fee.

(c) If the applicant requests a hearing, give notice of the grounds for refusal and hold a hearing on the refusal. Within 60 days after the hearing the commissioner shall file a written decision containing his or her findings and conclusions and serve a copy upon the applicant.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.106 Suspension, revocation, or refusal to renew license; notice; grounds; surrender of license; duration of license; reinstatement or issuance of new license; preexisting lawful contracts.

Sec. 6. (1) The commissioner may suspend, revoke, or refuse to renew a license. The commissioner shall give the licensee 10 days' notice in writing, forwarded by certified mail to the principal place of business of the licensee, stating the contemplated action and in general the reason for that action. The licensee shall also be notified that the contemplated action shall be effective after a reasonable opportunity to be heard, if the commissioner finds that the licensee or an owner, director, officer, member, partner, stockholder, employee, or agent of the licensee has done any of the following:

(a) Made a material misstatement in the application.

(b) Committed fraud, engaged in a dishonest activity, or misrepresented or failed to disclose any material particular of a credit card arrangement transaction to a person entitled to the information.

(c) Failed after 10 days' written notice of default, to pay the annual license fee; or to comply with a demand, ruling, or requirement of the commissioner lawfully made pursuant to this act.

(d) Either knowingly or without the exercise of due care to prevent it, violated this act or a rule promulgated by the commissioner under this act.

(e) Otherwise demonstrated unworthiness, bad faith, dishonesty, or any other quality indicating that the business of the licensee has not been or may not be conducted honestly, fairly, equitably, and efficiently within the purposes and intent of this act.

(2) The commissioner may suspend, revoke, or refuse to renew a license upon a finding of a fact or condition which, if the fact or condition had existed at the time of the original application for the license, clearly would have warranted the commissioner to refuse to issue the license originally.

(3) A licensee may surrender a license by delivering it to the commissioner with written notice of surrender. A surrender of a license shall not affect the licensee's civil or criminal liability for acts committed before the surrender.

(4) A license remains in force until the date of expiration or until surrendered, revoked, or suspended pursuant to this act. The commissioner may reinstate a suspended license or issue a new license to a licensee whose license has been revoked if the conditions under which the license was revoked have been corrected and the commissioner is satisfied, as the result of an investigation, that the conditions are not likely to recur.

(5) The suspension, revocation, nonrenewal, or surrender of a license shall not impair or affect the obligation of any preexisting lawful contract between the licensee and any consumer.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.107 Investigations and examination of books, accounts, records, and files; electronic data processing not prohibited; establishment of annual fee schedule; fees nonrefundable; penalty; disposition and use of fees and expenses; action for recovery of fees or expenses.

Sec. 7. (1) The commissioner may, at any time, make necessary investigations and examine the books, accounts, records, and files of the licensee. This section shall not be construed to prohibit keeping of records by electronic data processing methods. A licensee shall pay an examination fee for examination of its records conducted by the commissioner as provided by this section. The examination fee shall be invoiced upon the completion of the examination and is due and payable upon receipt of the invoice by the licensee. A licensee is not required to pay more than 1 examination fee in a calendar year.

(2) The commissioner shall annually establish the schedule of fees sufficient to pay the bureau's costs of administering this act. The fees are as follows:

(a) For the investigation of an applicant for a license, not less than \$200.00 or more than \$600.00.

(b) For the application and annual renewal of a license, not less than \$300.00 or more than \$800.00.

(c) For amending a license, not less than \$20.00 or more than \$75.00.

(d) For examination of the licensee, not less than \$40.00 or more than \$70.00 per hour for each examiner involved in an examination. In addition, a licensee shall pay the actual travel and lodging expenses incurred by bureau employees who travel out of Michigan to examine the records of the licensee.

(3) Fees received pursuant to this act are not refundable.

(4) A license renewal fee paid after December 31 is subject to a penalty of \$25.00 for each day the fee is delinquent or \$1,000.00, whichever is less.

(5) Money received under this act shall be paid into the state treasury to the credit of the financial institutions bureau to be used only for the operation of the financial institutions bureau.

(6) If any fees or expenses provided for under this act are not paid when required, the attorney general may maintain an action against the delinquent licensee for the recovery of the fees or expenses together with interest and costs.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984;—Am. 1992, Act 75, Imd. Eff. June 2, 1992.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.108 Subpoena of witnesses and evidence; oaths and affirmations; noncompliance; order; contempt.

Sec. 8. (1) The commissioner may subpoena witnesses and documents, papers, books, records, and other evidence, in any matter over which the commissioner has jurisdiction, control, or supervision. The commissioner may administer oaths and affirmations to a person whose testimony is required.

(2) If a person fails to comply with a subpoena issued by the commissioner or to testify with respect to any matter concerning which the person may be lawfully questioned, the circuit court for Ingham county, on application of the commissioner, may issue an order requiring the attendance of the person and the giving of testimony or production of evidence. The court may punish by contempt a person who fails to obey the court's order.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.109 Books, accounts, and records; maintenance, preservation, and availability; audit; cost.

Sec. 9. (1) A licensee shall maintain records relating to all transactions under this act so that the commissioner may enforce full compliance with this act. Books and accounts kept at the licensee's principal place of business shall be made available to the commissioner upon request or the licensee shall pay for an examiner to go to the place where the records are kept.

(2) The books, accounts, and records of the licensee shall be preserved and kept available for not less than 1 year after making the final entry on any loan recorded in the books, accounts, or records. The commissioner may for reasonable cause order an independent audit of the books and records of a licensee and the cost of the audit shall be an expense of the licensee.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.110 Maximum interest; computation; fee; offer of loan or credit in connection with other accounts, services, or similar agreements; prohibited conditions.

Sec. 10. (1) On a loan made or credit extended pursuant to a credit card arrangement, a licensee may collect interest not to exceed 1.5% of the unpaid balance per month. The interest shall not be precomputed but computed from time to time on the basis of the unpaid balances. In addition to collecting the interest permitted by this subsection, a licensee may assess a fee for the privilege of having a credit card or charge card if the fee is not computed as a percentage of the unpaid balance.

(2) A loan made or credit extended pursuant to a credit card arrangement authorized by this act may be offered in connection with other accounts, services, or other similar agreements not regulated by this act or any other applicable statute. A licensee may offer for sale and finance credit life insurance or credit accident and health insurance as defined in the credit insurance act, Act No. 173 of the Public Acts of 1958, being sections 550.601 to 550.624 of the Michigan Compiled Laws, or any other insurance pursuant to the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.100 to 500.8302 of the Michigan Compiled Laws.

(3) The making of a loan or extension of credit pursuant to a credit card arrangement shall not be conditioned on the requirement that insurance as described in subsection (2) be obtained or that any other goods or services be purchased as a condition of the privilege of obtaining a credit card or charge card.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984;—Am. 1987, Act 171, Imd. Eff. Nov. 16, 1987;—Am. 1994, Act 386, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.111 Truth in lending act; disclosures, information, and notices; applicability.

Sec. 11. (1) A licensee shall make or give to the consumer the disclosures, information, and notices required by the truth in lending act for a credit card arrangement that is governed by this act.

(2) To the extent that the truth in lending act does not impose duties or obligations upon a person for an account established for personal, household, or family purposes in a credit card arrangement that is governed by this act, the person shall make or give to the consumer disclosures, information, and notices in accordance with the federal truth in lending act with respect to the credit transaction.

(3) The truth in lending act shall apply to a credit transaction for which this act authorizes the collection of charges or interest notwithstanding its inclusion in a class of transactions within this state which, by regulation of the board of governors of the federal reserve system, is exempt from the truth in lending act.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.112 Wilful and intentional violation as misdemeanor; conduct barring recovery and entitling consumer to attorney fees and court costs; authorized actions.

Sec. 12. (1) Any licensee who wilfully and intentionally violates this act shall be guilty of a misdemeanor.

(2) Any licensee who enters into a credit card arrangement which does not comply with sections 10 and 11 or who violates section 10 or 11, except as a result of accidental or bona fide error, is barred from the recovery of any interest or other charges, attorney fees, or court costs and the consumer shall be entitled to recover reasonable attorney fees and court costs from the licensee.

(3) Whether or not he or she seeks damages or has an adequate remedy at law, a person, a county prosecutor, or the attorney general may bring an action to:

(a) Obtain a declaratory judgment that a method, act, or practice is a violation of this act.

(b) Enjoin in accordance with the principal of equity a person who is engaging or is about to engage in a method, act, or practice which violates this act.

(c) Except as limited by subdivision (d), recover actual damages resulting from a violation of this act, or \$250.00, whichever is greater, together with reasonable attorneys' fees and the costs of bringing the action. Recovery in class actions shall be limited to actual damages without attorneys' fees and the cost of bringing the action.

(d) If the licensee establishes by a preponderance of the evidence that the failure to comply with sections 10 and 11 or the violation of section 10 or 11 was not wilful and intentional, the amount recovered pursuant to subdivision (c) shall not exceed actual damages.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.113 Rules.

Sec. 13. The commissioner may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.315 of the Michigan Compiled Laws, as necessary for the administration and enforcement of this act.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

493.114 Exemptions; credit card or charge card issued prior to effective date of act.

Sec. 14. (1) A state or national bank, state or federal savings and loan association, state or federal credit union, or a retail seller or other creditor under Act No. 224 of the Public Acts of 1966, being sections 445.851 to 445.873 of the Michigan Compiled Laws, shall not be subject to the provisions of this act except that, to the extent such a lender is authorized by law to use the rate authority provided in this act and uses the rate authority provided in section 10, the lender shall also comply with the other provisions of section 10 and with section 11.

(2) A person holding a credit card or charge card issued prior to the effective date of this act may continue to use the credit card or charge card according to the terms of the contract until modified as permitted under this act and shall continue to be liable for loans or credit extended pursuant to any such contract.

History: 1984, Act 379, Imd. Eff. Dec. 28, 1984.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibility of the financial institutions bureau and the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services and the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.